UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, individually and on behalf of JEAN MARIE HOBSON and JULIUS HOBSON, JR., et al., Plaintiffs.	Civil Action
v.	No. 82-66
CARL HANSEN, Superintendent of Schools of the District of Columbia, THE BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA, et al., Defendants.	

REQUEST BY THE PARTIES FOR MODIFICATION OF THE COURT'S ORDER OF MAY 25, 1971

The parties hereby respectfully request that the Court enter and approve the attached Order as a replacement for the Court's Order of May 25, 1971. The Court's attention is respectfully directed to the submissions of the parties made on this date for pertinent information and explanations in support of this request. In the event that the Court has questions concerning any aspect of the attached Order or the justification therefor, counsel for the parties are available for a hearing on the matter.

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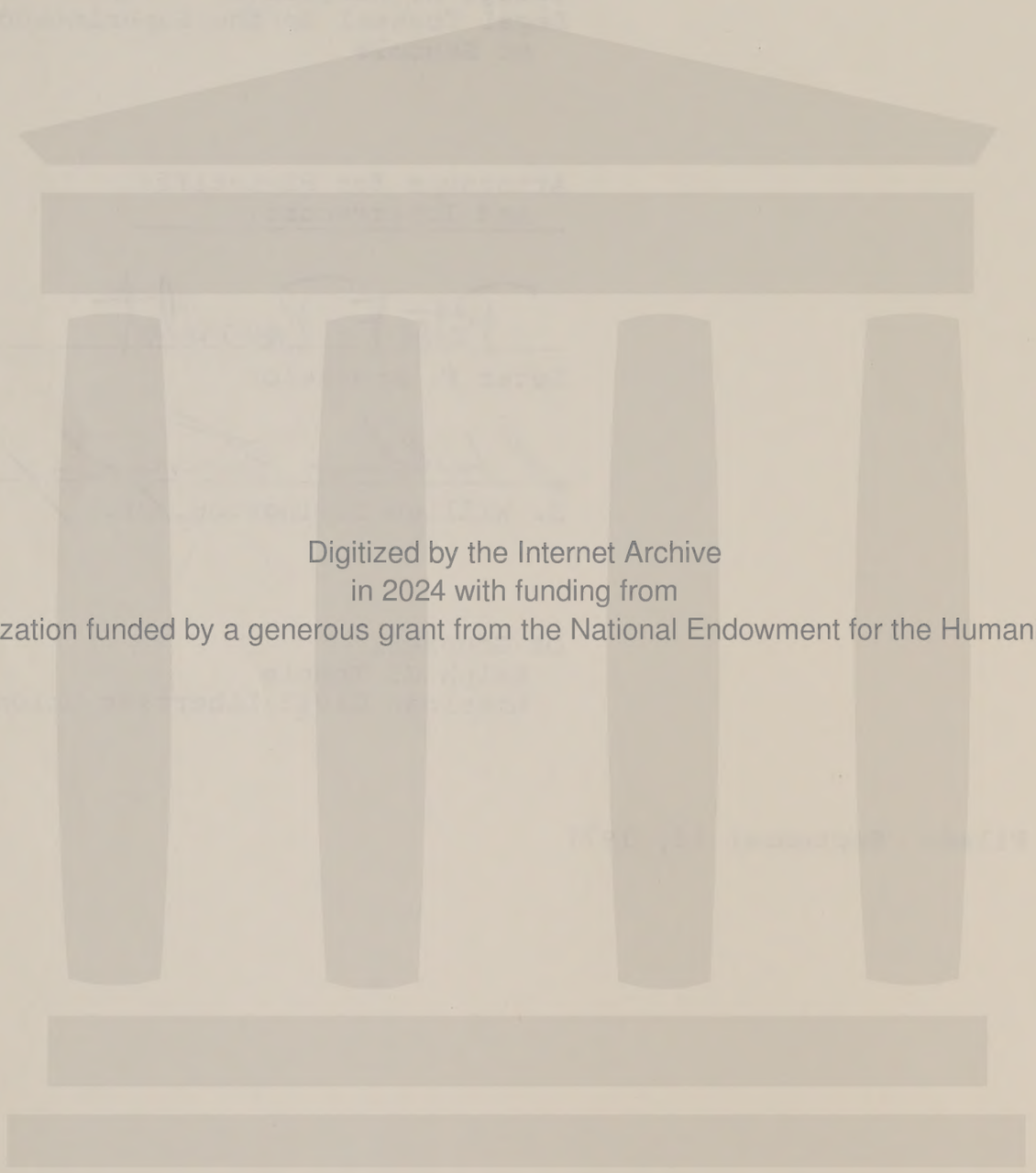
Filed: September 12, 1977



UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, individually and on behalf of JEAN MARIE HOBSON and JULIUS HOBSON, JR., et al., Plaintiffs, v. CARL HANSEN, Superintendent of Schools of the District of Columbia, THE BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA, et al., Defendants.	)	Civil Action No. 82-66

ORDER

1. For the five years from the date of this Order, no elementary school will be permitted to have a pupil-teacher ratio which deviates by more than plus or minus 5 percent from the citywide pupil-teacher ratio. The term "teacher" includes only certified regular classroom teachers paid from regular D. C. Budget, Impact Aid and other non-categorical federal funds and special subject teachers paid from such funds. (However, this Order does not apply to the allocation of teachers or special educational services for the handicapped.) For elementary schools having a kindergarten through sixth grade and having less than 250 students, a deviation of no more than minus 5 percent or plus 10 percent will be permitted.

2. For the following five years, no elementary school west of Rock Creek Park will be permitted to have

a pupil-teacher ratio which deviates by more than plus 5 percent from the citywide pupil-teacher ratio; schools west of Rock Creek Park having a kindergarten through sixth grade and having less than 250 students may deviate by no more than plus 10 percent. In addition, no elementary school in the lowest income quintile may have a pupil-teacher ratio which deviates by more than minus 5 percent from the citywide pupil-teacher ratio.

3. The requirements of paragraph 1 will expire automatically at the end of five years from the date of this Order absent a prima facie showing by plaintiffs and so long as those requirements have been adopted by the Board of Education in the form of regulations prior to the date of expiration. The requirements in paragraphs 2 and 4 will expire automatically at the end of the ensuing five years absent a prima facie showing by plaintiffs.

4. Defendants shall report annually to the Court concerning compliance with this Order and shall publish that report annually in the D. C. Register. That report shall include the numbers of pupils and of teachers in each elementary school, the pupil-teacher ratio for each such school, the citywide pupil-teacher ratio, and the average teacher experience in each school. In addition, during the second five-year period, such reports shall also identify those schools that are west of Rock Creek Park or are in the lowest income quintile.

J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE

Washington, D. C.

Proposed Outline of Plaintiffs' Submission

Ordered by Judge Wright to be Filed by February 15, 1971

I. Students in elementary schools west of Rock Creek Park are in schools with substantially higher teacher expenditures per pupil than students in schools in the rest of the city. This finding appears consistently in analyses by both plaintiffs and defendants, and is persistent over time. In addition, defendants do not dispute the fact that the geographic area west of Rock Creek Park is the whitest and wealthiest area of the city.

A. Total expenditures per pupil west of Rock Creek Park are given as $713, compared with $580 east of the Park, by June O'Neill and Arlene Holen in "The Division of D. C. School Funds," submitted with Defendants' Memorandum of November 17, 1970. These figures are for fiscal 1970. They include expenditures on special schools for the mentally retarded and physically handicapped -- all located in the east-of-the-Park area. We resubmit that it is improper to include these schools in any analysis of expenditures in regular schools.

B. From data submitted by defendants, excluding special schools,[1/] plaintiffs have calculated that per pupil teacher expenditures were $551.89 west of the Park compared with $449.80 for the entire city ($445.14 for the area east of the Park) in fiscal 1970. This difference increased in absolute and relative terms to $642.91 west,

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1/ Special schools excluded in Fiscal 1970 were Lenox Annex, Military Road, Bundy, Pierce, and Grant. For fiscal 1971, we were informed that only Bundy, Military Road and Pierce were special. Data submitted by defendants on January 18, 1971, indicate that Bundy has no special students, Pierce has no students at all, and Lenox Annex has only special students. Plaintiffs' calculations for fiscal 1971 therefore understate the actual difference by including Lenox Annex, a high expenditure school, and excluding Blow (associated with Pierce in the data), a low expenditure school.

$498.26 total city ($492.24 east of the Park) in fiscal 1971. 2/

C. Defendants offer the figures $699.02 west, $570.82 east of the Park for teacher expenditures per pupil in fiscal 1971. Both figures are substantially higher than plaintiffs' figures because of the inclusion of counsellors and librarians. 3/ (Plaintiffs' proposed order excludes salaries for counsellors and librarians.) Plaintiffs' figures show a $151, or greater than 30% difference. Defendants' figures show a $128, or greater than 22% difference. These data, then, are essentially in agreement that the difference in expenditures between schools east and west of Rock Creek Park is substantial in fiscal 1971.

D. In the original opinion in this case, the median expenditure per pupil for schools west of the Park is shown as $424, and the city-wide median as $306, for the total regular appropriation in fiscal 1964. 4/ These figures, being medians, and referring to total expenditures, are not strictly comparable with current figures. But the essential truth of plaintiffs' claim is apparent: the west-east differential has been maintained over time. In addition, the differential in teacher expenditures per pupil has increased substantially from fiscal 1970 to fiscal 1971.

2/ "A Research Report for Plaintiffs" by Stephan Michelson, et al., December 8, 1970. The figures cited here are revised calculations which differ slightly, but inconsequentially, from those in the December 8 submission.

3/ Dave M. O'Neill, et al., "An Analysis of Variation in Teacher Expenditures Per Pupil Among D. C. Elementary Schools," January 18, 1971, Table 3, p. 16.

4/ Hobson v. Hansen, 269 F. Supp. 401, 437 (D.D.C. 1967).

E. Because of spectacular variations in teacher expenditures per pupil among the heavily black and low-income schools east of Rock Creek Park, the undisputed fact that schools in the whitest and wealthiest neighborhoods west of Rock Creed Park receive much higher average expenditures could be submerged by the use of certain statistical correlation techniques, such as the "weighted Pearson coefficient", suggested in the O'Neill analysis at page 24. Since we have never rested our assertions that defendants have violated this Court's 1967 injunction against discrimination on the basis of racial and economic status on statistical correlations, we contend that whether these correlations are weighted or not is irrelevant to this case.

Nevertheless, because this Court might disagree with our contentions, we have calculated the correlations which O'Neill suggests but does not perform for the interest of this Court:

Correlation Between 1959 Income of
School Neighborhood And Expenditures
Per Pupil For All Teachers' Salaries
And Benefits In District of Columbia Elementary Schools.

	Unweighted	Weighted
All schools [5/]		
fiscal 1970	+ .111	+ .079
fiscal 1971	+ .197	+ .094
Only special schools excluded		
fiscal 1970	+ .186	+ .108
fiscal 1971	+ .212	+ .102

5/ Additional data filed by defendants for the first time on January 18, 1971 has allowed us to use 130 schools in fiscal 1970 instead of the 128 used in our December 8, 1970 memorandum. These more accurate correlations are slightly higher than those we presented on December 8, 1970. For fiscal 1971, there are 128 schools included.

O'Neill's presumption that the correlations between neighborhood income and teacher expenditures per pupil would be lower if weighted is seen to be correct. His presumption that these correlations would be zero or negative is incorrect. Furthermore, we see that weighted or unweighted, the 1971 correlations are higher than the 1970 correlations (with the one exception of the weighted correlation excluding special schools). All the correlations are statistically significant. Of course we do not consider the data -- 1959 income -- sufficiently accurate to rest our case on these correlations.6/ Nor, even if the data were accurate, would we argue on the basis of correlations. However, despite all of the defendants' claims, the data, even when calculated the way they suggest, support plaintiffs' claims.7/

6/ For example, plaintiffs and defendants are agreed that the relative economic status of the area East of the Anacostia River has declined between 1960 and 1970. This is currently the geographic area of the city with the lowest per pupil expenditures. Thus use of 1960 census data (1959 income) and statistical correlation techniques understates discrimination on the basis of economic status against Anacostia school children, including intervening plaintiff Amy M. Humphrey.

7/ We calculated these same correlations for just the schools east of Rock Creek Park and did find that all but one of them were negative. But see footnote 6 supra. Thus O'Neill's reasoning appears correct in one respect: it is the resources going to children west of the Park which, weighted or unweighted, produces a positive correlation between income of school area and teacher expenditure per child. This is what we have argued, and O'Neill apparently agrees with us. In addition, we calculated correlations citywide excluding both special schools and model school division schools, thereby excluding all schools which defendants claim have been deliberately chosen either for special or compensatory treatment but including all schools which defendants claim have not been chosen for such treatment. The correlations jumped dramatically: fiscal 1970: +.219 (unweighted), +.151 (weighted); fiscal 1971: +.306 (unweighted), +.194 (weighted).

F. The west-east differential in teacher expenditures per pupil is the appropriate differential for the court to focus on. Defendants' reliance on other comparisons is misplaced.

(1.) All needy-lunch children versus all non-needy-lunch children. If the comparison involved here is made on a city-wide basis, it suffers from the same defects as the city-wide statistical correlation technique discussed under (I)(E) above.[8/] In addition, the needy-lunch data suffers from the defects already mentioned in Plaintiff's memorandum of December 8, 1970.

(2.) Schools East of the Park grouped by percentage needy-lunch quartile and by income quartile; and schools West of the Park grouped by percentage Negro. Comparisons of schools east of the Park do not defeat a showing of discrimination on the basis of racial and economic status for at least two principal reasons in addition to those mentioned under (I)(E) above. First, the neighborhood income data for certain areas east of the Park is suspect,[9/] as is the needy-lunch data. Second, under the law of this case, it is plaintiffs' position that spectacular differentials in per pupil expenditures for teachers' salaries and benefits in favor of certain schools in low-income black neighborhoods at the expense of other schools in low-income black neighborhoods constitutes discrimination unless adequately justified. There has been no adequate justi-

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8/ However, as noted in our December 8, 1970 memorandum, needy-lunch children constitute only 5% of total enrollment in west of the Park schools but 38% of total enrollment in east of Park schools.

9/ See footnote 6, supra.

fication shown here because there are spectacular variations in such expenditures even when special schools and model school division schools are excluded from the comparison. With respect to schools west of the Park grouped by percentage Negro, we reject defendants' implication that no violation of this court's 1967 decree may be found simply because pursuant to another portion of that decree, defendants have bussed a small number of black children to schools in high-income white neighborhoods while continuing to spend much more money per pupil in those schools than in the schools in the neighborhoods from which the students were bussed.

The corporation counsel refers to "Michelson's correlations using adjusted and unadjusted income figures" stating that they "are so close together, though statistically insignificant, as to really rebut plaintiffs' criticism of defendants' use of adjusted income figures to reflect socio-economic changes through bussing " (p. 2). Michelson never presented correlations using adjusted income data. The +.053 correlation is between income of school neighborhood and Regular D. C. expenditures per pupil; the +.100 correlation is between income of school neighborhood and teacher expenditures per pupil; the +.172 correlation is between income of school neighborhood and teacher expenditures per pupil excluding special schools. No conclusion can be drawn about use of adjusted income from these correlations. Defendants are in error also when they claim lack of "statistical significance" for these correlations -- though they never do claim that even by their measure the relevant figure, +.172, is statistically insignificant. We have already explained this in detail to the court in our submission of January 26, 1971. If the argument about adjusted income were relevant, we would have stronger objection to the gross misreading of the Michelson Analysis. However,

as we have previously explained, in the Hobson analysis, this case cannot be argued with adjustments in income.

A simple example illustrates why this is so. Suppose in a school district there were three schools, A, B and C, and two racial populations, white and black; 95% of the school population is black. Of the 5% white, 3% are in school A, and the average income of their neighborhoods is $10,000. The other 2% white live in lower income neighborhoods and are in schools B and C. The average income of the black neighborhoods is, say, $6000, but of course there are variations around the average. It turns out that the incomes of the neighborhood areas feeding schools A, B and C are:

A	$10,000
B	8,000
C	4,000

Despite the difference in the income of the neighborhood between schools B and C, school C has higher expenditures ($600) than B ($500). However, school A's expenditures are $700 per pupil. A complaint is filed stating that the higher expenditure in A favors the white population. An order is issued requiring the transportation of certain students from school C to school A -- these students are all from the black population. Also, they are poor. They lower (or "adjust") the schoolwide average income in A to $8500, without significantly affecting the average per pupil expenditure in school C. Expenditures per pupil remain about the same in the three schools, and a new complaint is filed stating that the white population is still favored. The richest (and whitest) students are in the school spending the most money.

In an attempt to refute the new charges of discrimination, the school system claims that there is no correlation between per pupil expenditure and income of schools, as adjusted

by the inflow of black pupils. But the fact is that the richest children are still in the school with the highest expenditures, and this fact is not changed by adding poor children to that school. The income of those students is not changed, and their identification with superior resources is not changed by allowing a few other children access to those resources. Since the issue is that a minority of children who can be selected on the basis of their economic status is favored, then to average away the characteristic which defines these children is an absurd reply. Following the same logic, one could say that the influx of black children reduced the whiteness of the school. This is true. But it did not remove the white children from the school nor the resources from the white children. Thus the argument that white children (or rich children) have access to superior resources cannot be denied by adjusting either the income or the whiteness of the schools.

Plaintiffs have been completely consistent in this matter. We have not relied on correlations using income of school nor racial composition of school in our arguments. We have looked at those schools which are in the wealthiest areas (thus presumably -- though not necessarily -- having the wealthiest children in the public school system), and those schools with the largest number of white children. We have considered these schools as a class, and compared these schools with the remaining schools. This is our argument: that these schools are favored; thus, that these particular children are favored. If, by favoring other (black, poor) children in these schools the average income or color of the school changes, the fact that a certain group of children are in these schools and have access to superior resources is not in the least diminished. We repeat, therefore, that even if defendants had made technically correct arguments about averaging school income, they would be presenting an irrelevant defense.

Our position is buttressed by defendants' assertion that if overcrowding in Anacostia could be eliminated and if no parents volunteered their children for the bussing program, then no black children would be bussed into these schools.[10/] It is also buttressed by the fact that average expenditures per pupil for all teachers' salaries and benefits in those eight schools west of Rock Creek Park which are attended by the smallest percentage of black children are much higher than such expenditures at all remaining schools in the city.

II. The differential in expenditures among schools east and west of the Park is not in dispute. Defendants have claimed that the expenditure differential is legitimate and non-consequential. They claim it is legitimate to the extent that it arises from their ability to run comparable quality schools cheaper if they are larger (economies of scale). They claim it is non-consequential because teacher experience, of which there is much more west of the Park, is not productive, and because the larger class sizes east of the Park, the manifestation of scale economies, do not indicate lower quality instruction. Defendants have failed to establish the verity of either claim, or the relevance of the latter claim. Plaintiffs have offered evidence that scale explains little of the expenditure difference, and that after accounting for scale economies there is a substantial bias against Anacostia schools in pupil-teacher ratios. Defendants have failed to counter these findings.

A. Defendants' original claim for legitimacy was contained in their Memorandum of November 17. The claim there was that economies of scale produced higher pupil-

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10/ As we read the law of this case, defendants would be required either to bus volunteering black children to schools west of the Park or to redraw elementary school zone boundaries to create elementary school zones which cross the Park or both even if all overcrowding, by the school system's definition of that term, were eliminated.

teacher ratios in schools east of the Park. The O'Neill analysis claims that virtually all of this pupil-teacher ratio differential comes from the allocation of special teachers, contradicting earlier claims of defendants that the economy was in regular class allocation.[11/] O'Neill does not indicate how he obtained his figures, but they are favorable to plaintiffs' case. They indicate that more special teachers per pupil are assigned to schools west of Rock Creek Park than east. O'Neill does not ask, as we did in our analysis of pupil-teacher ratios (which had to be carried out without the benefit of data differentiating special from regular teachers) whether assignment of teachers to schools west of the Park seems to follow the size-ratio relationship east of the Park. From the scatter diagram,[12/] it seems clear that the relationship is different west of the Park. This should throw some doubt on the technological basis of this relationship. All we know from this analysis is that special teachers are allocated more to schools west of the Park than east. (Plaintiffs' proposed order, with the exceptions indicated therein, would include expenditures for salaries of both regular and special teachers.)

B. Defendants argue that some of the differential in expenditures per pupil is based on history, not technology. They argue that the portion of teacher expenditures which is attributable to experience is historical, and therefore,

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11/ Compare "A closer look at the anatomy of the $62.19 differential due to total teachers shows that fully $49.64 of it is due to a difference in special teachers per pupil..." O'Neill analysis p. 17, with "Teacher-pupil ratios do vary in relation to the size of the school enrollment because of differences in enrollments per grade in larger and smaller schools." Defendants' memorandum of November 17, p. 42.

12/ O'Neill analysis, chart 2, page 13.

it seems, legitimate.[13/] It is true that a proper assessment of the technological relationship between teacher expenditure and size should be free of spurious (that is, historical, not technological) correlation.

Yet O'Neill dismisses the correlation between teacher degree status and experience -- attributing to experience the combined effects of both factors. More importantly, there is absolutely no reason why historical discrimination should be accepted as making legitimate current discrimination.[14/] Plaintiffs have demonstrated that teachers west of Rock Creek Park have higher degree status than those east of the Park, that the expenditures attributable to experience alone are not completely separable from those attributable to degree status, and that the correction factor offered by the school board is biased to correct for both experience and the experience-degree status interaction.[15/] Defendants have not attempted to rebut either the facts or the analysis referred to here. Furthermore, the failure of the School Board to eradicate the results of previous, discriminatory decisions results in the maintenance of a discriminatory system. To argue that the presence of the most

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13/ ". . . old teachers tend to be in old (and therefore small) buildings." O'Neill analysis, p. 11.

14/ See, for example, the "Separate Reply of Defendant, Bardyl R. Tirana, A Member of the Board of Education, To Plaintiffs' Memorandum of December 8, 1970," p. 1: "The historical discrimination on the basis of race and economic status, particularly in the areas east of the Anacostia River, was so great that the Board did not have the capacity to make an immediate and effective correction . . ."

15/ See Michelson analysis p. 135 and pp. 21-24.

experienced and most educated teachers in the schools west of the Park is legitimate because historical is to completely misunderstand the argument of plaintiffs and the nature of their complaint.

C. Defendants' second argument appears to be that, even if (or to the extent that) differential expenditures per pupil are not legitimate (explainable by technological or historical relationships), the resulting real resource differentials are inconsequential. This argument takes two forms. First, those which are said (but not demonstrated) to be technological (pupil-teacher ratios) are claimed to be of no educational consequence. Second, the portion of the differential ascribed to history, and incorrectly identified as experience (when some of this is, in fact, education of teachers), is also claimed to be inconsequential.

Our arguments in rebuttal are that first, and most importantly, the educational consequence of these expenditures -- as distinguished from discriminatory expenditure patterns -- is not an issue in this case. Second, if it is deemed that educational consequence is important, then we still argue that the school department's actual judgment on educational consequence, demonstrated by the way they actually run the school system as distinguished from their sometimes inconsistent positions in this litigation, is the only proper standard by which a court should judge educational consequence -- absent special circumstances not present here. We accept those items which they pay for (such as experience) and strive for

(such as low pupil-teacher ratios) as indicators of school quality. Furthermore, O'Neill's data and the equivocal state of the literature demand an equalization order.

D. O'Neill argues that only experience of six years and less has educational consequence. Although this figure is O'Neill's "intuitive hunch," and thus has questionable standing in court, we are willing to accept it for the sake of argument. O'Neill, p. 9. O'Neill spends considerable effort demonstrating that experience seems not to be productive after some point, though what is demonstrated best is that educational research is unclear on the benefits of teacher experience, except to conclude that such experience is not as productive as the dollars spent on it would imply.

Even by O'Neill's "intuitive" standard, schools west of Rock Creek Park receive favored treatment. From the diagram on page 27 of the O'Neill analysis we see that all teachers with 6 or more years experience are assumed to be of equal quality (this always means "holding other factors constant"), and this quality is the highest allowed as a result of experience. From O'Neill's Table 3, p. 16, we see that 60.4% of the teachers east of the Park but 68.3% of the teachers west of the Park are "highest quality" -- six years or more of experience.

E. It is true that pupil-teacher ratios have never been found to be a major source of quality differential

among schools. We must point out several important caveats. First, all of these studies concern achievement test results. We do not know what the consequences might be on other measures of school production, and in the absence of that knowledge, we cannot condone large differentials. Second, new work, testing this question with more sophisticated statistical techniques, does find class size to make a difference in test scores.[16/] Once again, this is not the arena in which to decide such an issue, and the only proper course while education specialists are attempting to resolve it is to insist on equality. Third, we note that the school department is attempting to reduce class size, and has repeatedly pointed with pride at its success.

Thus defendants are saying at the same time that they have accomplished something expensive but important, and that they have wasted the Congressional appropriation on something of no educational consequence. If it is important to reduce class size, then it should be so in Anacostia as well as with schools west of the Park. If it is not, then why are they trying so hard to do it? Last, we note that O'Neill himself finds it convenient to associate lower class size with quality when he argues against reducing teacher-pupil ratios as a means of equalizing expenditures.[17/] If pupil-teacher ratios are important, then the smaller ratios west of the Park are discriminatory. If they are not effective, then adjusting them to achieve equalization

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16/ This is work being performed at the Rand Corporation by Harvey Averch and Herbert Kiesling. Their results are preliminary, and should not be taken to be a counter example. This does demonstrate, however, that the question is still in doubt.

17/ "This type of adjustment might lead to lower quality instruction." O'Neill Analysis, p. _____.

in expenditures cannot be criticized.

It seems reasonable to believe that lower class size is of some importance, and more experience (at least in certain ranges) is of some importance. The only way we know how to measure how much of one compensates for a loss in another is by their price. For that reason, dollar equalization -- with the flexibility plaintiffs' remedy provides -- is a sensible solution.

III. Defendants' reliance on Dandridge v. Williams, 397 U.S. 471 (1970), as suggesting the appropriateness of a narrower scope of review in this case, is for several reasons misplaced.[18/] First, Dandridge addresses state allocation of welfare monies. The Supreme Court has never accorded to welfare the preferred status that Brown v. Board of Education and subsequent Supreme Court decisions confer on public education. It is precisely the Brown requirement -- that public education "be made available to all on equal terms," 347 U.S. at _____, -- that plaintiffs seek in Hobson. Second, as plaintiffs have indicated in several earlier pleadings filed with this Court, the law of this case requires "real equality" with respect to the allocation of the "objectively measurable aspects of education," Hobson v. Hansen, 269 F. Supp. 401, 496(D.D.C.1967) That standard -- fully congruent with the orders of numerous federal courts[19/] -- remains constitutionally necessary to correct admitted and continuing discrimination in favor of the west of the

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18/ Additional distinctions between this case and Dandridge are discussed on pages 4-5 of our Motion for Judgment on the Pleadings, filed July 14, 1970.

19/ See the cases cited at page 7 of the Plaintiffs' Memorandum of Points and Authorities, filed May 19, 1970.

Park schools.

For these reasons, we urge the Court to require defendants to equalize, within 5%, per pupil instructional expenditures among the District's schools, subject to the judicially-approved exceptions noted in our December 8, 1970 proposed order.

CONCLUSION

The logic of our position is this: There has been discrimination in resource allocation in the D. C. schools historically. This was determined in the original finding in this case, based on 1963-64 data. That discrimination still exists. The differential expenditures are not legitimate. Plaintiffs and defendants now agree that "economies of scale" are of very minor importance. Defendants argue, and plaintiffs concur, that about half of the east-west differential is due to historical favoritism to west schools. The rest of the differential is due to the assignment of teachers, regular and special.

This leaves the question of where the burden of justification should lie. We claim that the school board, after four years, has failed to equalize resources. We assert that the burden should no longer be on plaintiffs to demonstrate that this is so. The best solution is to impose an order such that, if defendants comply, they will have equalized to our and the court's satisfaction. This will relieve both defendants and plaintiffs of the necessity of arguing

over each year's results. It is time to set a standard within which the school system can work, and which is, as well as we can tell, non-discriminatory. We urge that our proposed order accomplishes these purposes.

Their answers in our prior pleadings
The Defendants know
City wide discrimination and it belongs on disparity of perpetual exp.

The disc which are available

Plain Defendant

Memo of Jan 18

Do not let simplicity of comparison be obscured by experts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al.	:	
Plaintiffs,	:	
v.	:	Civil Action No. 82-66
CARL F. HANSEN, et al.,	:	
Defendants.	:	

PLAINTIFFS' REPLY TO OPPOSITION OF DEFENDANTS TO PLAINTIFFS' MOTION FOR AN ORDER TO SHOW CAUSE

Nothing in Defendants' Opposition detracts from the need for immediate contempt sanctions in this case to insure that plaintiffs will not need to return to this Court every semester for further relief. While defendants' numerous concessions in that Opposition speak for themselves,[1/] a few points merit a brief reply.

A. Defendants ask the Court to excuse their disobedience of its May 25, 1971 decree on the grounds that their only purpose in disobeying it "was to improve the equalization formula" (Opp., p. 6) by correcting "an anomaly which would be violative of the spirit and purpose of that decree" (Opp., p. 4). This excuse is totally unpersuasive.[2/] On October 1, 1971, in their first compliance report to this Court, defendants devoted an

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1/ E.g., "sixty-five schools were found to be out of compliance with the decree of May 25, 1971" (p. 1 of January 8, 1973 letter from the Superintendent to the Board attached to the Opposition); "any show cause order which this Court may issue should be limited in terms of time to no earlier than November 21, 1972" (Opp., p. 3); "a show cause order, if there is one, should be directed to the Board only" (Opp., p. 4).

2/ Equally unpersuasive is the defendants' plea to be excused from contempt sanctions because they allegedly acted in good faith. It is well settled that good intentions cannot sterilize conduct otherwise contumacious. E.g., McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949); Singer Mfg. Co. v. Sun Vacuum Stores, Inc., 192 F. Supp. 738, 741 (D.N.J. 1961).

entire section of the report to a very convincing explanation of why the salaries of teachers on leave should continue to be counted at the school from which the teachers were on leave. 3/ That accounting method was cleared in advance with the undersigned counsel, who agreed not to challenge it before this Court. On June 1, 1972, in defendants' second compliance report, the accounting method for treating the salaries of teachers on leave employed in the October 1, 1971 report was retained.

Against this background, the statement by the Corporation Counsel that at its November 15, 1972 meeting, "the Board inquired whether the salaries and benefits of teachers on extended leave were included or excluded from the report", conveys the erroneous impression that defendants discovered this fact for the first time on November 15, 1972. If such a change in accounting treatment was determined to be desirable (and we have been offered no explanation for such a change as convincing as that used to justify the old method), there was no justifiable reason why it could not have been incorporated in an equalization plan which became effective on November 15, 1972. 4/ It is precisely because defendants have

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3/ That explanation is reproduced as Exhibit A to this Reply.

4/ In this regard, we totally reject the defendants' claim (Opp., p. 3) that "implicit in the granting of" the Court's order changing the date for filing the annual compliance report from October 1 to December 1 "is the acceptance by this Court of defendants' intention not to attempt to effect implementation of the terms of the decree until after analysis of the status of the school system, on the basis of the October pupil enrollment count, was completed." The May 25, 1971 decree by its terms requires continuous compliance on and after October 1, 1971. The rationale of defendants' argument would lead to construing an order changing the filing date of a report as an affirmative mandate to permit the schools to be out of compliance for an entire semester every year.

presented no satisfactory explanation for their conduct, that both retroactive and prospective contempt sanctions should be imposed forthwith.

B. Defendants ask the Court to have the predominantly black and poor school children of the District of Columbia pay their fines for them by directing any contempt sanctions against the Board as an artificial entity (thereby requiring the money to come from the school system's budget) rather than directing such sanctions against the Board members individually.[5/] This attempt to avoid individual responsibility should be rejected. Well established precedent supports the imposition of fines upon individual members of public bodies for the official conduct of that body itself. E.g., Cape May & Schellinger's Landing R.R. v. Johnson, 35 N.J.Eq. 422 (1882) (each member of Cape May, New Jersey city council individually fined $10.00 after the council passed an ordinance in violation of a prior court order).[6/]

5/ However, we agree that the Superintendent of Schools, Dr. Hugh J. Scott, should not be held in contempt and fined on the basis of the representations made in defendants' Opposition that Board members, not the Superintendent, were responsible for the inexcusable delay in compliance which has occurred. Accordingly, Superintendent Scott's name should be deleted from the order annexed as Exhibit A to Plaintiffs' motion for an order to show cause.

6/ Defendants' reliance (Opp., p. 4) on D.C. Code §31-104a is misplaced. Compare, e.g., United States v. Craig, 266 Fed. 230 (S.D.N.Y. 1920). This is an action for contempt, not an action in tort for damages.

Conclusion

Each member of the Board of Education of the District of Columbia should be held in contempt of this Court's order of May 25, 1971, and fined in accordance with plaintiffs' proposed order annexed as Exhibit A to our motion for an order to show cause.

Respectfully submitted,

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Washington, D. C. 20006

Attorney for Plaintiffs

Of Counsel:

Ralph J. Temple
American Civil Liberties
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CERTIFICATE OF SERVICE

I hereby certify that three copies of the Plaintiff's Reply To Opposition Of Defendants To Plaintiffs' Motion for An Order To Show Cause in the above-captioned case were delivered by hand this 17th day of January, 1973, to Thomas R. Nedrich, Esquire, Assistant Corporation Counsel of the District of Columbia, District Building, Room 316, 14th and E Streets, N. W., Washington, D. C. 20004.

Peter F. Rousselot

204. Handling of Salaries of Teachers on Leave

The customary practice within the D. C. Schools when a teacher goes on maternity, educational, or other approved leave is to preserve her position and substitute a Temporary teacher for the duration of the leave. This practice was followed during the equalization procedure. Teachers known to be or scheduled to be on approved leave when schools opened carried a designation to that effect and their position and salary were assigned to the new school. After reassignment was completed, the D. C. School's staff substituted Temporaries for teachers on leave as per the normal practice. Each school with a teacher on leave carried that position at the salary level of the individual on leave.

This procedure has left those schools in which temporaries replaced regular teachers on leave with slightly different actual teacher expenditures than shown in the compliance report. This approach was used for the following reasons:

(1) The determination of when a teacher will return from leave has proved to be difficult, especially for maternity and sick leave which accounts for the majority of all leave. Most teachers return from leave during the school year and have a right to return to their present assigned position. If Temporary salaries were substituted for the regular teacher's salaries, some schools might be thrown out of compliance when leaves terminated.

(2) 42% of all schools have at least one teacher on leave. These schools are scattered randomly across the city and do not seem to give favor to any one grouping of schools.

(3) The names of Temporary teacher replacements are not available until after schools open. Since the Equalization Plan requires actual teacher data, hypothetical, Temporary teacher data would have caused discrepancies in the report.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al, Plaintiffs,	)	
GREGORY JONES, a minor by his next friend, EMILY JOHNSON, et al., Applicants for Intervention,	)	Civil Action No. 82-66
v.	)	
CARL F. HANSEN, et al., Defendants.	)	

AFFIDAVIT OF JULIUS W. HOBSON

Julius W. Hobson, an original plaintiff in this cause, being duly sworn on oath, deposes and says that the subject matter of the Hobson v. Hansen litigation has from the outset encompassed the right of access to an equal educational opportunity for all District children of school age irrespective of a child's past educational deprivation or handicapping condition.

The relief sought by petitioners is necessary in order to afford them their right to an equal educational opportunity. Therefore, I support the Motion to Intervene, Motion for Preliminary Injunction, and Petition for Enforcement of Decree and Supplemental Relief filed by Gregory Jones, et al.

_____

JULIUS W. HOBSON

Subscribed and sworn to before me this _____ day of June, 1971.

_____

Notary Public

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al., :

Plaintiffs, :

v. : Civil Action No. 82-66

CARL F. HANSEN, et al., :

Defendants. :

Plaintiffs' Rebuttal Memorandum

Introduction

This memorandum, submitted pursuant to this Court's order of January 27, 1971, summarizes our disagreements with defendants' January 18, 1971 memorandum. It takes up the defendants several efforts to justify admitted inequalities, and demonstrates the irrelevance and/or the incorrectness of those efforts. Specifically, this memorandum argues (I) that the disparity in resource allocation favoring west of the Park schools remains undisputed, and is the appropriate disparity on which to focus; (II) that the disparity is not accounted for by such legitimate factors as genuine economies of scale; and (III) that defendants' efforts to show the inconsequentiality of this disparity are both belied by the data and irrelevant to the law of this case.

Nine months after plaintiffs' first submission to this Court, the basic wrong -- the inequity in the allocation of District resources -- remains firmly established.[1/]

Defendants have attempted in numerous and sometimes inconsistent[2/] ways, to belittle this showing. We have patiently

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1/ This wrong is particularly egregious in view of this Court's finding, in 1967, of discriminatory resource allocation policies based, in part, on 1963-64 school data. The discrimination has persisted over the past seven years.

2/ See, e.g., footnotes 18 and 28, infra.

examined each new contention of defendants to determine its relevance and its persuasiveness. As this memorandum summarizes, we conclude that defendants have in no way justified the prevailing discrimination in favor of the white and wealthy west-of-the-Park schools, at the expense of poor and black schools east of the Park. We urge this Court to reiterate the first principles of this case, to require the equalization of the "objectively measurable aspects" of education -- here, the dollars allocated for teacher expenditure -- among the District's schools.

I. It is undisputed that students in elementary schools west of Rock Creek Park attend schools with substantially higher teacher expenditures per pupil than students in schools in the rest of the city. This finding appears consistently in analyses by both plaintiffs and defendants, and persists over time. In addition, defendants do not dispute the fact that the geographic area west of Rock Creek Park is the whitest and wealthiest area of the city.

A. In their memorandum of November 17, 1970, defendants calculated that <u>total</u> expenditures per pupil west of Rock Creek Park were $713, compared with $580 east of the Park.[3/]

B. From data submitted by defendants, plaintiffs have calculated that per-pupil <u>teacher</u> expenditures in fiscal 1970 were 24% higher west of Rock Creek Park ($551.80) than east of Rock Creek Park ($445.14). This difference <u>increased</u> in absolute and relative terms in fiscal 1971 when teacher expenditures per pupil were 31% higher west of the Park ($642.91) than east of the Park

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3/ June O'Neill and Arlene Holen, "The Division of D. C. School Funds," submitted with Defendants' Memorandum of November 17, 1970. These figures are for fiscal 1970. They <u>include</u> expenditures on special schools for the mentally retarded and physically handicapped -- all located in the east-of-the-Park area. We resubmit that it is improper to include these schools in any analysis of expenditures in regular schools.

($492.24).[4/]

C. In their January 18, 1971 submission, defendants offer the figures $699.02 west, $570.83 east of the Park for teacher expenditures per pupil in fiscal 1971. Both figures are substantially higher than plaintiffs' figures because of the inclusion of counsellors and librarians.[5/] (Plaintiffs' proposed order excludes salaries for counsellors and librarians.)[6/] Thus, in fiscal 1971, plaintiffs' figures show a $151, or 31% difference. Defendants' figures show a $128, or 22% difference. These data, then, are essentially in agreement that the difference in expenditures between schools east and west of Rock Creek Park is substantial.

D. In the original opinion in this case, the median expenditure per pupil for schools west of the Park is shown as $424, and the city-wide median as $306, for the total regular appropriation in fiscal 1964.[7/] These figures, being medians, and

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4/ In fiscal 1970, the city-wide average per-pupil teacher expenditure was $449.80; in fiscal 1971, it was $498.26. All data in paragraph (I)(B) of the text and in this footnote exclude only special schools for the mentally retarded and physically handicapped. Special schools excluded in fiscal 1970 were Lenox Annex, Military Road, Bundy, Pierce and Grant. For fiscal 1971, we were originally informed that only Bundy, Military Road and Pierce were special. Data submitted by defendants on January 18, 1971, indicate that Bundy has no special students, Pierce has no students at all, and Lenox Annex has only special students. Plaintiffs' calculations for fiscal 1971 therefore understate the actual difference by including Lenox Annex, a high-expenditure school, and excluding Blow (associated with Pierce in the data), a low-expenditure school. The figures cited in paragraph (I)(B) of the text and in this footnote are revised calculations which differ slightly, but inconsequentially, from those in plaintiffs' December 8, 1970 submission. In that submission we slightly understated the discrimination which in fact exists.

5/ Dave M. O'Neill, et al., "An Analysis of Variation in Teacher Expenditures Per Pupil Among D. C. Elementary Schools," January 18, 1971, Table 3, p. 16. (O'Neill analysis)

6/ Plaintiffs' proposed order also includes kindergarten children and their instructional expenditures contrary to what might be read as the implication of the O'Neill analysis that we seek to exclude such pupils and expenditures. (O'Neill analysis, p. 4)

7/ Hobson v. Hansen, 269 F. Supp. 401, 437 (D.D.C. 1967).

referring to total expenditures, are not strictly comparable with current figures. But the essential truth of plaintiffs' claim is apparent: the west-east differential has been maintained over time.[8/]

E. Instances might conceivably exist in which the use of statistical correlations could mask the presence of expenditure differentials based on race or wealth.[9/] Since statistical correlations have never been the basis of our assertions that defendants have violated this Court's 1967 injunction against discrimination on the basis of racial and economic status, we contend that whether these correlations are weighted or not is irrelevant to this case. Nevertheless, because this Court might disagree with our contentions, we have calculated the correlations which O'Neill suggests, but does not perform, for the interest of this Court. (These correlations appear in Appendix A attached to this memorandum.) O'Neill's presumption that the correlations between neighborhood income and teacher expenditures per pupil would be lower if weighted is correct. His presumption that these correlations would be zero or negative is incorrect. Furthermore, weighted or unweighted, the 1971 correlations are <u>higher</u> than the 1970 correlations (with the one exception of the weighted correlation excluding special schools).[10/] Of course, we do not consider the city-wide 1959 income data sufficiently accurate to rest our

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8/ Without extending the "debate" about weighted versus unweighted averages, and without resorting to entirely uncalled for language employed by the corporation counsel (January 18, 1971 memorandum, p. 4), we will simply note that Michelson's statement "our equations will be based, therefore, on the means as defined by the Court, not as defined by defendants" was a precise and correct statement of the mathematical truism that a regression equation fits the mean values of the variables.

9/ This is O'Neill's implication when he speculates that the appropriate correlations would make the undisputed differential go away. (O'Neill analysis, p. 24)

10/ Since there are data for virtually all schools, all correlations are "statistically significantly different from zero". See plaintiffs' further supplemental memorandum of January 26, 1971.

case on these correlations.[11] Nor, even if the data were completely accurate, would we argue on the basis of correlations. However, despite all of the defendants' claims, the data, even when calculated the way they suggest, support plaintiffs' claims.[12]

11/ For example, plaintiffs and defendants are agreed that the geographic area west of Rock Creek Park is the wealthiest in the city, and that the relative economic status of the area east of the Anacostia River has declined between 1960 and 1970. The latter region is currently the geographic area of the city with the lowest per-pupil expenditures. (The calculations in our December 8 memorandum slightly understated the gap in teacher expenditures per pupil between west-of-Park and east-of-River schools. In fiscal 1970, teacher expenditures per pupil at east-of-River schools ($412.65) were 34% below west-of-Park schools. In fiscal 1971, those expenditures ($436.68) were 47% below west-of-Park schools.) Because of the agreed upon decline in the relative economic status of the area east of the Anacostia River, the use of 1960 census data (1959 income) and statistical correlation techniques understates discrimination on the basis of economic status against Anacostia school children, including intervening plaintiff, Amy M. Humphrey.

12/ We calculated these same correlations for just the schools east of Rock Creek Park and did find that all but one of them were negative. But see footnote 11, supra. Thus O'Neill's reasoning appears correct in one respect: it is the resources going to children west of the Park which, weighted or unweighted, produce a positive correlation between income of school area and teacher expenditures per child. This is what we have argued, and O'Neill apparently agrees with us. In addition, we calculated correlations city-wide excluding both special schools and Model School Division schools (thereby excluding all schools which defendants claim have been deliberately chosen either for special or compensatory treatment but including all schools which defendants claim have not been chosen for such treatment). These correlations were higher still, as noted in Appendix A. Despite the corporation counsel's implications to the contrary on page 9 of defendants' January 18, 1971 memorandum, Model School Division schools are the only "administrative subdivision" of D. C. elementary schools which have been deliberately selected for compensatory programs from the regular budget. Anacostia School Project schools have not. Nevertheless, the evidence of discrimination on the basis of racial and economic status is still overwhelming when Model School Division schools are included. See, e.g., paragraph (I)(B) of the text.

F. The west-east differential in average teacher expenditures per pupil is the appropriate differential for this Court to focus on. Defendants' reliance on other comparisons is misplaced.

1. All needy-lunch children versus all non-needy-lunch children: If the comparison involved here is made on a city-wide basis, it suffers from the same defects as the city-wide statistical correlation technique discussed under (I)(E) above.[13/] In addition, the needy-lunch data suffers from the uncontradicted defects already mentioned in plaintiffs' memorandum of December 8, 1970.

2. Schools east of the Park grouped by percentage needy-lunch quartile and by income quartile: Comparisons of schools east of the Park do not defeat a showing of discrimination on the basis of racial and economic status. The data suffers from the defects discussed under (I)(E) above. Furthermore, the neighborhood income data for certain areas east of the Park is suspect,[14/] as is the needy-lunch data.

3. Schools west of the Park grouped by percentage Negro: We reject defendants' implication that no violation of this Court's 1967 decree may be found simply because pursuant to another portion of that decree, defendants have bussed a small number of black children to schools in high-income white neighborhoods while continuing to spend much more money per pupil in those schools than in the schools in the neighborhoods from which the students were bussed.

13/ However, as noted in our December 8, 1970 memorandum, needy-lunch children constitute only 5% of total enrollment in west-of-the-Park schools but 38% of total enrollment in east-of-the-Park schools.

14/ See footnote 11, supra.

Defendants fail to disprove racial and economic discrimination by attempting to "adjust" neighborhood income.[15/] A simple example illustrates why this is so. Suppose in a school district there were three schools, A, B and C, and two racial populations, white and black; 95% of the school population is black. Of the 5% white, 3% are in school A, and the average income of their neighborhoods is $10,000. The other 2% white live in lower-income neighborhoods and are in schools B and C. The average income of the black neighborhoods is, say, $6,000, but of course there are variations around the average. It turns out that the incomes of the neighborhood areas feeding schools A, B and C are:

A	$10,000
B	8,000
C	4,000

Despite the difference in the income of the neighborhood between schools B and C, school C has higher expenditures ($600) than B ($500). However, school A's expenditures are $700 per pupil. A complaint is filed stating that the higher expenditure in A favors the white population. An order is issued requiring the transportation of certain students from school C to school A. These students are all from the black population; also, they are poor. They lower (or "adjust") the schoolwide average income

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15/ The corporation counsel refers to "Michelson's correlations using adjusted and unadjusted income figures" stating that they "are so close together, though statistically insignificant, as to really rebut plaintiffs' criticism of defendants' use of adjusted income figures to reflect socio-economic changes through bussing" (p. 2). Michelson never presented correlations using adjusted income data in his December 8 analysis: The +.053 correlation was between income of school neighborhood and regular D. C. expenditures per pupil; the +.100 correlation was between income of school neighborhood and teacher expenditures per pupil; the +.172 correlation was between income of school neighborhood and teacher expenditures per pupil excluding special schools. No conclusion can be drawn about use of adjusted income from these correlations. If the argument about adjusted income were relevant, we would have stronger objection to the gross misreading of the Michelson analysis. However, as we have previously explained, in the Hobson analysis, this case cannot be argued with adjustments in income.

in A to $8,500, without significantly affecting the average per-pupil expenditure in school C. Expenditures per pupil remain about the same in the three schools, and a new complaint is filed stating that the white population is still favored. The richest (and whitest) students are in the school spending the most money.

In an attempt to refute the new charges of discrimination, the school system claims that there is no correlation between per-pupil expenditure and income of schools, as adjusted by the inflow of black pupils. But the fact is that the richest children are still in the school with the highest expenditures, and this fact is not changed by adding poor children to that school. The identification of the richest students with superior resources is not changed by allowing a few other children access to those resources. The discriminatory practice -- selecting for favored treatment children who come from high-income families -- is not rectified by attempting to average away the characteristic which defines these children. The school system has removed neither the white children from the school nor the resources from the white children. Thus, the argument that white children (or rich children) have access to superior resources cannot be denied by adjusting either the income or the whiteness of the schools.

Plaintiffs have been completely consistent in this matter. We have not relied on correlations using income of school nor racial composition of school in our arguments. We have looked at those schools which are in the wealthiest areas (thus presumably -- though not necessarily -- having the wealthiest children in the public school system), and those schools with the largest number of white children. We have considered these schools as a class, and compared these schools with the remaining schools. This is our argument: that these schools are favored; thus, that these particular children are favored. If, by

favoring a few other black and poor children in these schools the average income or color of the school changes, the fact that the white and wealthy group of children are still in these schools and have access to superior resources is not in the least diminished. We repeat, therefore, that even if defendants had made technically correct arguments about averaging school income, they would be presenting an irrelevant defense.

Our reliance on comparisons between west-of-Park schools and the District's other schools, and not on the (F)(1), (2) and (3) comparisons, is buttressed by defendants' assertion that if overcrowding east of Rock Creek Park could be eliminated and if no east-of-Park parents volunteered their children for the bussing program, then no east-of-Park children would be bussed to west-of-Park schools.[16/] It is also buttressed by the fact that average teacher expenditures per pupil in those eight schools west of Rock Creek Park which are attended by the smallest percentage of black children are much higher than such expenditures at all remaining schools in the city.[17/]

II. As discussed in paragraph (I) above, the differential in expenditures among schools east and west of the Park is not in dispute. However, defendants have claimed that the expenditure differential is (1.) legitimate and (2.) non-consequential. They claim it is legitimate to the extent that it arises from their ability to run comparable quality schools cheaper if the are larger, in other words, from economies of scale. They claim

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16/ As we read the law of this case, defendants would be required either to bus volunteering east-of-Park children to schools west of the Park or to redraw elementary school zone boundaries to create elementary school zones which cross the Park or both even if all overcrowding, by the school system's definition of that term, were eliminated.

17/ See page 8 of our December 8, 1970 memorandum.

it is non-consequential because teacher experience, of which there is much more west of the Park, is not productive, and because the larger class sizes east of the Park, the manifestation of scale economies, do not indicate lower quality instruction. Defendants have failed to establish the truth of either claim, or the legal significance of the latter claim. Plaintiffs have offered evidence that scale explains little of the expenditure difference, and that after accounting for scale economies, there is a substantial bias against Anacostia schools in pupil-teacher ratios. Defendants have failed to counter these findings.

A. Defendants' original claim for legitimacy was contained in their memorandum of November 17. The claim there was that economies of scale produced higher pupil-teacher ratios in schools east of the Park. The Dave O'Neill analysis claims that virtually all of this pupil-teacher ratio differential comes from the allocation of special teachers, contradicting earlier claims of defendants that the economy was in regular class allocation.[18] O'Neill does not indicate how he obtained his figures, but they are favorable to plaintiffs' case. They indicate that more special teachers per pupil are assigned to schools west of Rock Creek Park than east.[19] This highlights the appropriateness of plaintiffs' proposed order which, with the exceptions indicated therein, would include expenditures for salaries of both regular and special teachers.[20]

18/ Compare "A closer look at the anatomy of the $62.19 differential due to total teachers shows that fully $49.64 of it is due to a difference in special teachers per pupil..." O'Neill analysis, p. 17, with "Teacher-pupil ratios do vary in relation to the size of the school enrollment because of differences in enrollments per grade in larger and smaller schools." Defendants' memorandum of November 17, p. 42.

19/ O'Neill does not ask, as we did in our analysis of pupil-teacher ratios (which had to be carried out without the benefit of data differentiating special from regular teachers) whether assignment of teachers to schools west of the Park seems to follow the size-ratio relationship east of the Park. From the scatter diagram on page 13 of the O'Neill analysis (Chart 2), it seems clear that the relationship is different west of the Park. This should throw some doubt on the technological basis of this relationship.

20/ With respect to reporting special teacher expenditures per pupil, this Court should require that the salaries of special teachers who teach at more than one school should be pro-rated among the schools according to the time spent at each school not between them.

B. Defendants argue that some of the differential in expenditures per pupil is based on history, not technology. They argue that the portion of teacher expenditures which is attributable to experience is historical, and therefore, it seems, legitimate.[21/] It is true that a proper assessment of the technological relationship between teacher expenditure and size should be free of spurious (that is, historical, not technological) correlation. But there is absolutely no reason why historical discrimination should be accepted as making legitimate current discrimination.[22/] Plaintiffs have demonstrated that teachers west of Rock Creek Park have higher degree status than those east of the Park, that the expenditures attributable to experience alone are not completely separable from those attributable to degree status, and that the correction factor offered by the school board is biased to correct for both experience and the experience-degree status interaction.[23/] For these reasons, it would be impossible to frame an equalization order which excludes solely longevity pay. Defendants have not attempted to rebut either the facts or the analysis referred to here. Furthermore, the failure of the school board to eradicate the results of previous discriminatory decisions results in the maintenance of a discriminatory system. To argue that the presence of the most experienced and most educated teachers in the schools west of the Park is legitimate because historical is to completely misunderstand the argument of plaintiffs and the nature of their complaint.

In this regard, it is instructive to compare the recent

21/ ". . . old teachers tend to be in old (and therefore small) buildings." O'Neill analysis, p. 11.

22/ See, for example, the "Separate Reply of Defendant, Bardyl R. Tirana, A Member of the Board of Education, To Plaintiffs' Memorandum of December 8, 1970," p. 1: "The historical discrimination on the basis of race and economic status, particularly in the areas east of the Anacostia River, was so great that the Board did not have the capacity to make an immediate and effective correction . . ."

23/ See Michelson analysis of December 8, p. 135 and pp. 21-24.

opinion of the Fifth Circuit in Hawkins v. Shaw, No. 29,013, decided on January 28, 1971. There, the appellate court considered, inter alia, the allegation that it was racially discriminatory to provide 99% of the white residents of Shaw, Mississippi with sanitary sewers while providing such facilities to only slightly over 80% of Shaw's black residents. The trial court had found this to be justified, in part, because the town had a policy to automatically extend existing sewer lines into new subdivisions of areas which already had sewer lines. But the Fifth Circuit rejected this excuse, stating:

> [T]hat extensions are now made to new areas in a non-discriminatory manner is not sufficient when the effect of such a policy is to "freeze in" the results of past discrimination. As this court stated in Henry v. Clarksdale School District, 409 F.2d 682, 688 (5th Cir., 1969), "a relationship otherwise rational may be insufficient in itself to meet constitutional standards - if its effect is to freeze in past discrimination". [Slip opinion, page 8.]

In this context, the question still might arise whether, although defendants and plaintiffs agree that scale economies are quite small, they might be large enough to account for teacher expenditures per pupil outside the requested 5% range in a small number of exceptionally large or small schools, and if so, whether any exceptions to the 5% rule should be permitted for that reason.

The Michelson analysis concluded that a 5¢ per-child scale economy was possible, and this led to the realization that schools more than 1,000 pupils different in size might have scale economies accounting for teacher expenditure per pupil differentials outside the 5% range.[24/] We nonetheless argue that there

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24/ It is important to note that it is this scale economy factor not the estimate of between 7.5% and 15% of teacher expenditures per pupil attributable to size of school that is the appropriate focus here. Thus, the question is not how much variance in teacher expenditure per pupil is explained by size but rather, the magnitude in dollars and cents of the economy-of-scale factor.

should be no exceptions, based on school size, to the 5% rule for the following reasons:

1. All the exceptionally large schools are located east of Rock Creek Park, and most of them are located in Anacostia. Historic discrimination in resource allocation against these east-of-Park schools, and against Anacostia schools in particular, has been so great and well documented, that there should be no exceptions to the lower bound of the 5% rule permitted even if this were to result in very slight overcompensation in the case of these very few large schools attributable to compensating for that portion of teacher expenditures per pupil below the lower bound of the 5% range resulting from technological economies of scale. Similarly, a majority of the west-of-Park schools are exceptionally small, and are operating substantially below their own capacity and the city-wide average capacity. Thus, any part of their high teacher expenditures per pupil attributable to technological economies of scale which places these schools above the upper bound of the 5% range is not a legitimate economy of scale in view of (a.) defendants' established foot-dragging on the voluntary bussing program;[25/] and (b.) defendants' failure to redraw elementary school zone boundaries to cross Rock Creek Park.[26/]

2. The O'Neill analysis contends that Michelson's expenditure variable included too much: it included the scale related expenditure plus non-scale related expenditure (experience and degrees) which nonetheless is correlated with scale related expenditure. We agree. Therefore, although Michelson's analysis of the percentage of variation explained by size of school is not

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25/ See plaintiffs' Supplemental Memorandum of December 16, 1970.

26/ See footnote 16, supra.

affected, his estimate of scale economies in dollar terms (5¢ per pupil) is on that account too high.

3. Defendants have already informed this Court that if equalization is ordered, several exceptionally small schools, such as Jackson, will be closed, and their enrollments assigned to neighboring schools.[27/]

4. It is not clear to what extent the dollar estimates of scale economies are directly proportional to teacher salaries. This would depend on which teachers are in which schools. A 5¢ per-child scale economy, with increases in average teacher expenditure, would encompass more and more schools. For example, if the average expenditure is taken to be $576, as in the O'Neill analysis, then a 5% interval is $28.80 above and below the mean, and at 5¢ a child this allows a size difference of 1,152 before scale economies as estimated take expenditures out of the allowable range.

5. Defendants themselves have made no argument that scale economies, though small, would still allow exceptions to the 5% rule. Lost in justifying disparities in pupil-teacher ratios as educationally inconsequential has been the attempt to estimate to what extent they are legitimate. O'Neill's analysis is entirely descriptive: it apportions variation in school expenditure among variables.[28/] It is not analytic: it does not attempt to ascertain whether there is a technological relationship lying behind this apportionment, or whether it is just the result of school board action giving both more experienced teachers and fewer pupils per teacher to children west of Rock Creek Park.

27/ Defendants' Memorandum of November 17, 1970, p. 7.

28/ Dave O'Neill's analysis of variation allows us to calculate the proportion of teacher expenditures per pupil attributable to size in fiscal 1971, when factors correlated with size are not accounted for. This is analogous to the first equation in Michelson's Table VI-4, which gives "the naive estimate of the economies of scale offered by the defendants." (Michelson analysis, p. 113) By apportioning the interaction among the variables, we derive the estimate of 7.1% of the variance in teacher expenditures per pupil attributable to classroom teachers, and 19.6% due to special teachers, for a total of 26.7%. Michelson's comparable estimate for fiscal 1970 was 28.1%. Michelson then found that the net effect of size, accounting for factors correlated with size, was at most about one-half of this "naive" estimate. Thus, the O'Neill analysis is completely consistent with the conclusion of the Michelson analysis that school size accounts at most for 15% of the observed variation in teacher expenditures per pupil in D. C. elementary schools. However, the O'Neill analysis is completely inconsistent with the assertions in defendants' November 17, 1970 memorandum, based on the Washington Post article by June O'Neill and Arlene Holen, that school size accounted for 100% of that variation.

6. The 5% range is sufficiently large that there will be many "errors" within that range -- differences as large as $50 per child, based on fiscal 1971 salary scales, are still tolerated. The difference between some theoretically "equal" expenditure per pupil lying just outside the range and the expenditure which we would expect to see for such a school right at the boundary would be small with respect to errors within the range.[29/] This difference would be too small to encumber the order with exceptions.

C. Defendants' second argument appears to be that, even if (or to the extent that) differential expenditures per pupil are not legitimate (explainable by technological or historical relationships), the resulting real resource differentials are inconsequential. This argument takes two forms. First, those which are said (but not demonstrated) to be technological (pupil-teacher ratios) are claimed to be of no educational consequence. Second, the portion of the differential ascribed to history, and incorrectly identified as experience (when some of this is, in fact, education of teachers), is also claimed to be of no educational consequence.

We emphatically reject both forms of this second argument. The educational consequence of these expenditures -- as distinguished from the inequity due to racially and economically discriminatory expenditure patterns -- is not the primary issue in this case.[30/] Again it is instructive to consider Hawkins v. Shaw, supra, where challenges were made to discriminatory distributions of various municipal services including street paving, street lights, sanitary sewers, surface water drainage, water mains, fire hydrants and traffic control signs. There, although

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29/ For example, suppose the mean expenditure is $500, the upper boundary therefore $525. Suppose an exceptionally small school "deserves" expenditures of $530. A $525 expenditure, within the boundary of the order, is less different from the "equal" figure of $530 than a school whose "equal" figure is $510 but whose expenditure per pupil is $480 -- all within the range.

30/ We reject, therefore, the suggestion by O'Neill at page 6 of his analysis that the extent to which quality of schooling variation varies with teacher expenditures per pupil is "the $64 question." (emphasis added.)

the court was not unmindful of the "outcomes" of the maldristribution of these services along racial lines, the primary focus was on the pattern of discrimination itself:

> Because this court has long adhered to the theory that "figures speak, and when they do, Courts listen," Brooks v. Beto, 366 F.2d 1, 9 (1966) * * * we feel that appellants clearly made out a prima facie case of racial discrimination. [Slip opinion, page 3; other citations omitted.]

To the extent that educational consequence is important, then the District of Columbia school system's actual judgment on educational consequence, demonstrated by the way it actually runs the system, is -- absent special circumstances not present here -- the only proper standard by which a court should judge educational consequence. The rigid and racially-isolating track system which this Court banned in 1967 is an example of such a special circumstance. In that instance, the evidence of the pernicious effect of that track system on poor and black children was so overwhelming that this Court had no choice but to intervene and rule that the system itself could not stand. Here, by contrast, the school system's decisions to reward more experienced teachers with more money and to minimize pupil-teacher ratios are supported by sufficiently credible evidence (as noted in sections (D)(1) and (2) below and in our December 8 memorandum) that this Court should not rule these decisions themselves to be illegal. Plaintiffs accept those items which the school system pays for (such as experience) and strives for (such as low pupil-teacher ratios) as indicators of school quality. Ironically, defendants' experts, Dave O'Neill, et al., seek to belittle the criteria which defendants have adopted. However, even the O'Neill evidence and analysis, standing alone, requires an equalization order.

D. 1. O'Neill argues that only experience of six years and less has educational consequence. Although this figure is

O'Neill's "intuitive hunch,"[31] and thus has questionable standing in court, we are willing to accept it for the sake of argument.[32] Even by O'Neill's "intuitive" standard, schools west of Rock Creek Park receive favored treatment. From the diagram on page 27 of the O'Neill analysis we see that all teachers with 6 or more years experience are assumed to be of equal quality (this always means "holding other factors constant"), and this quality is the highest allowed as a result of experience. From O'Neill's Table 3, p. 16, we see that 60.4% of the teachers east of the Park but 68.3% of the teachers west of the Park are "highest quality," having six years or more of experience.

2. It is true, as O'Neill suggests, that pupil-teacher ratios have not been found to be a major source of quality differential among schools. We must point out several important caveats.

First, O'Neill concludes that "about 2/3 of the children in the D. C. system are in classes with pupil classroom teacher ratios of between 24.4 and 28.4. No empirical studies of school inputs could isolate any effect within this range of class size on educational quality."[33] We accept the negative implication of this sentence to mean that 1/3 of the children in the system, or approximately 30,000 children, are in schools outside this pupil-teacher ratio range, and that at least some empirical

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31/ See O'Neill analysis, page 9.

32/ O'Neill spends considerable effort demonstrating that experience seems not to be productive after some point, though what point is never proved. What he demonstrates best is that educational research is unclear on the benefits of teacher experience, except to conclude that such experience is not as productive as the dollars spent on it would imply. This proof is insufficient to warrant a ruling that this method of payment of teachers -- as distinguished from the allocation of resources to pay them -- is illegal.

33/ O'Neill analysis, page 37. "Pupil-teacher ratio" and "class size" are used synonymously throughout this discussion.

studies have found an effect outside this range.[34] O'Neill himself finds it convenient to associate lower class size with quality when he argues against reducing teacher-pupil ratios as a means of equalizing expenditures.[35]

Second, all of the studies cited by O'Neill concern achievement test results. We do not know what the consequences might be on other measures of school outcomes. In the absence of that knowledge, large differentials such as exist in the District of Columbia cannot be condoned.

E. Defendants' positions on teacher salaries and class size are internally contradictory. The net result of what defendants say on the issue of teacher quality is this: we have accomplished something expensive and important, but we have wasted our Congressional appropriation on something of no educational consequence. On the issue of pupil-teacher ratios, they argue that they should be applauded for their expensive efforts to reduce pupil-teacher ratios east of the Park, but that it is not discriminatory that those ratios remain substantially higher east of the Park (spectacularly so, in the case of some schools) than west of the Park even when the system city-wide is operating at 82.4% of capacity.

Absent adequate justification -- which has not been shown -- the pattern of teacher expenditures per pupil is clearly discriminatory on its face. Each student in each school, no matter where it is located, is entitled to the same amount of dollar resources to purchase the best available teachers to teach in that school.

34/ Compare O'Neill analysis, page 32. New work, not cited by O'Neill, and using more sophisticated statistical techniques than any work he cites, also finds class size to make a difference in test scores. This is work being performed at the Rand Corporation by Harvey Averch and Herbert Kiesling. Their results are preliminary, and should not be taken to be a counter example. This does demonstrate, however, that the question is still in doubt.

35/ O'Neill analysis, page 2, n.2: "This type of adjustment might lead to lower quality of instruction."

To the extent that educational outcomes are relevant, defendants' argument that our proposed order amounts to "much ado about nothing" is simply fantastic.[36/] To take one of many examples: if teacher expenditures per pupil in fiscal 1971 at the Draper school (actually $340.41) had been at the city-wide average ($498.26), they would have been increased by $157.85 per pupil. The increase in total teacher expenditures would then have been $182,632.45. Under salary scales currently in effect, this would have permitted the addition of perhaps 18 new teachers at Draper. The addition of these new teachers would have reduced the pupil-teacher ratio from the present 28 to 1 to 20 to 1. Even Dave O'Neill concedes that such a reduction has a beneficial effect on school outcomes when measured by achievement test scores.[37/]

Both lower class size and more experience (at least in certain ranges) are of some importance. The only way we know how to measure how much of one compensates for a loss in another is by their price. For that reason, dollar equalization -- with the flexibility plaintiffs' remedy provides -- is the only appropriate and judicially manageable standard.

III. With respect to the legal standards applicable to this case, defendants' reliance on Dandridge v. Williams, 397 U.S. 471 (1970), as suggesting the appropriateness of a narrower scope of review here, is for several reasons misplaced.[38/] First, Dandridge addresses state allocation of welfare monies. The Supreme Court has never accorded to welfare the preferred status that Brown v. Board of Education, 347 U.S. 483 (1954), and subsequent

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36/ O'Neill analysis, page 38.

37/ See pages 17 and 18, supra.

38/ Additional distinctions between this case and Dandridge are discussed on pages 4-5 of our Motion for Judgment on the Pleadings, filed July 14, 1970.

Supreme Court decisions confer on public education. It is precisely the Brown requirement -- that public education "be made available to all on equal terms," 347 U.S. at 493 -- that plaintiffs seek in Hobson.

Second, the stricter standard of review of alleged violations of the equal protection clause which this Court properly applied in its original opinion in 1967 was recently cited approvingly by the Fifth Circuit in Hawkins v. Shaw, supra:

> In a civil rights suit alleging racial discrimination in contravention of the Fourteenth Amendment, actual intent or motive need not be directly proved, for:
>
> > "'equal protection of the laws means more than merely the absence of governmental action designed to discriminate; . . . we now firmly recognize that the arbitrary quality of [thoughtlessness] can be as disastrous and unfair to private rights and the public interest as the perversity of a willful scheme.'" * * * [Slip opinion, pp. 12-13; citations omitted.]

In Hawkins, of course, the court considered services which are much less critical than the provision of public education involved here. The stricter standard approved by this court in its 1967 opinion has also been applied in several other recent cases. E.g., Kennedy Park Homes v. Lackawana, No. 35,320, 2d Cir., December 7, 1970 (Clark, Justice, retired); Southern Alameda Span. Sp. Org. v. Union City, 424 F.2d 291, 295-296 and n.9 (9th Cir. 1970); Norwalk CORE v. Norwalk Redevelopment Agency, 395 F.2d 920, 931-932 (2d Cir. 1968).

Finally, as plaintiffs have indicated in several earlier pleadings filed with this Court, the law of this case requires "real equality" with respect to the allocation of the "objectively measurable aspects" of education, Hobson v. Hansen, 269 F. Supp. 401, 496 (D.D.C. 1967). That standard -- fully congruent with

the orders of numerous federal courts[39/] -- remains constitutionally necessary to correct admitted and continuing discrimination in favor of the west-of-the-Park schools.

For these reasons, we urge the Court to require defendants to equalize, within 5%, per-pupil instructional expenditures among the District's schools, subject to the judicially-approved exceptions noted in our December 8, 1970 proposed order.

CONCLUSION

Discrimination in resource allocation in the D. C. schools has existed historically. This was determined in the original finding in this case, based on 1963-64 data. That discrimination has persisted and still exists. It has not been justified by defendants. Plaintiffs and defendants now agree that "economies of scale" are of very minor importance. Defendants argue, and plaintiffs concur, that about half of the west-east differential is due to historical resource allocation policies which favor west-of-the-Park schools. The rest of the differential is due to differential access to these resources.

Plaintiffs have established that the school board, four years after this Court's initial opinion, has failed to equalize resources. The burden should no longer be on plaintiffs to demonstrate that this is so. The best solution is to impose an order such that, if defendants comply, they will have equalized to plaintiffs' and this Court's satisfaction. This will relieve both defendants and plaintiffs of the necessity of arguing over each year's results. It is necessary and appropriate to set a standard within which the school system can work, and which is non-discriminatory. We urge that our proposed order accomplishes these purposes, and that it should be entered forthwith.

39/ See the school equalization cases cited at page 7 of the Plaintiffs' Memorandum of Points and Authorities, filed May 19, 1970.

To the extent that we disagree with other points raised in defendants' January 18, 1971 memorandum, and those points are not mentioned above, we believe they are adequately covered in our prior pleadings.

Respectfully submitted,

Peter F. Rousselot
815 Connecticut Avenue
Washington, D.C. 20006

Attorney for Plaintiffs

Of Counsel:
Ralph J. Temple
American Civil Liberties
Union Fund
1424 16th Street, N.W.
Washington, D.C. 20036

Of Counsel:
David L. Kirp
Center for Law and Education
Harvard University
38 Kirkland Street
Cambridge, Massachusetts 02138

Appendix A

Correlation Between 1959 Income of School Neighborhood And Expenditures Per Pupil For All Teachers' Salaries And Benefits In District of Columbia Elementary Schools.

	Unweighted	Weighted
All schools included*/		
fiscal 1970	+ .111	+ .079
fiscal 1971	+ .197	+ .094
Only special schools excluded		
fiscal 1970	+ .186	+ .108
fiscal 1971	+ .212	+ .102
Only special and Model School Division schools excluded		
fiscal 1970	+ .219	+ .151
fiscal 1971	+ .306	+ .194

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*/ Additional data filed by defendants for the first time on January 18, 1971 has allowed us to use 130 schools in fiscal 1970 instead of the 128 used in our December 8, 1970 memorandum. These more accurate correlations are slightly higher than those we presented on December 8, 1970. For fiscal 1971, there are 128 schools included.

Certificate of Service

I, Peter F. Rousselot, hereby certify that: three copies of the foregoing Plaintiffs' Rebuttal Memorandum, together with the attached Appendix A, entitled "Correlation Between 1959 Income of School Neighborhood And Expenditures Per Pupil For All Teachers' Salaries And Benefits In District of Columbia Elementary Schools" were delivered by hand this 11th day of February, 1971, to Thomas R. Nedrich, Esquire, Room 308, District Building, Washington, D. C., an attorney for defendants; and that one copy of the aforementioned documents were sent by first class mail, postage prepaid, on the same day, to: John A. Bleveans, Washington Lawyers' Committee for Civil Rights Under Law, 1025 15th Street, N. W., Washington, D. C. 20005, attorney for intervenors Elizabeth A. Budd, et al.; to Don R. Allen, 1775 K Street, N. W., Washington D. C. 20006, attorney for intervenors Mr. and Mrs. William Bennett; and to Stephen B. Ives, Jr., 1320 19th Street, N. W., Washington, D. C. 20036, attorney for intervenors Richard T. Stout, et al.

_____

Peter F. Rousselot

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON et al.,

Plaintiffs

v. Civil Action No. 82-66

CARL F. HANSEN et al.,

Defendants

ORDER

It appearing that the achievement test scores of the children involved in the voluntary busing program ordered by this court in its judgment of June 19, 1967 may be helpful in determining the issue relating to per-pupil expenditure now before the court,

It is ORDERED that the defendants file in the record not later than February 15, 1971 such statistics and studies as will show the effect of the voluntary busing program on the achievement test scores of the children participating. These statistics should be on a school-by-school basis so that the improvement, if any, of the children in each receiving school may be discerned.

J. SKELLY WRIGHT*
UNITED STATES CIRCUIT JUDGE

Washington, D. C.

January 28, 1971

*Sitting by designation pursuant to 28 U.S.C. § 291(c) (1964).

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 82-66
CARL F. HANSEN, et al.,	:	
Defendants.	:	

SEPARATE REPLY OF DEFENDANT, CHARLES I. CASSELL, A MEMBER OF THE BOARD OF EDUCATION, TO PLAINTIFFS' MEMORANDUM OF DECEMBER 8, 1970

As noted in the attached affidavit, Charles I. Cassell, an individual defendant herein and a member of the Board of Education, has authorized me to file the attached affidavit which states that he also disassociates himself from the position taken herein by the Board and the Corporation Counsel on behalf of the Board and that he has no objections to the entry by this Court of the order proposed in plaintiffs' memorandum of December 8, 1970, for the reasons stated in my separate reply to that memorandum filed herein on January 18, 1971.

Respectfully submitted,

Bardyl R. Tirana
3509 Lowell Street, N. W.
Washington, D. C. 20016
783-3344; 244-6579

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 82-66
CARL F. HANSEN, et al.,	:	
Defendants.	:	

Affidavit of Charles I. Cassell

District of Columbia, ss:

I, Charles I. Cassell, being first duly sworn, depose and say that I disassociate myself from the position taken herein by the Board of Education and the Corporation Counsel on behalf of the Board, and that I have no objection to the entry by this Court of the order proposed in plaintiffs' memorandum of December 8, 1970, for the reasons stated in Mr. Tirana's separate reply to that memorandum filed herein on January 18, 1971.

Charles I. Cassell

Sworn and subscribed to before me
this 22nd day of January, 1971

Louise Girard

Notary Public, D.C.

My Commission expires: January 31, 1975

Certificate Of Service

I hereby certify that a copy of the foregoing Separate Reply of Charles I. Cassell, together with the affidavit attached thereto, was mailed postage prepaid on January 22, 1971, to Thomas R. Nedrich, Esq., Assistant Corporation Counsel, Room 308 District Building, Washington, D. C. 20004, as attorney for defendants; to Peter F. Rousselot, Esq., 815 Connecticut Avenue, N. W., Washington, D. C. 20006, as attorney for plaintiffs; to John A. Bleveans, Washington Lawyers Committee for Civil Rights Under Law, 1025 - 15th Street, N. W., Washington, D. C. 20005, as attorney for intervenors Budd; to Don R. Allen, Esq., 1775 K Street, N. W., Washington, D. C. 20006, as attorney for intervenors Bennett; and to Stephen B. Ives, Jr., Esq., 1320 - 19th Street, N. W., Washington, D. C. 20036, as attorney for intervenors Stout.

Bardyl R. Tirana

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al.	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 82-'66
	:	
CARL F. HANSEN, et al.,	:	
	:	
Defendants.	:	

SEPARATE STATEMENT OF DEFENDANTS'
CHARLES I. CASSELL AND BARDYL R. TIRANA
AS TO TEACHER SALARY DIFFERENTIALS AND AS TO
PUPIL-TEACHER RATIOS

Individual defendants, Charles I. Cassell and Bardyl R. Tirana, both at-large members of Defendant Board of Education, hereby disassociate themselves from the separate memoranda filed by the Corporation Counsel on behalf of the Board of Education on April 27, 1971, for the following reasons:

1. The Corporation Counsel contends that the Board of Education denies that higher salaries are paid for more experienced teachers because of their greater effectiveness. This is not the case. Since we have been members of the Board, January, 1970, the school administration has consistently justified to us higher salaries for more experienced teachers on the basis of their effectiveness; and the Board has consistently justified to Congress salary differentials for longevity based on the greater effectiveness of the more experienced teachers.

2. The Corporation Counsel also contends that the Board finds no difference in the educational opportunity existing within the range of pupil-teacher ratios now in the elementary schools. Since we have been on the Board, (a) pupil-teacher ratios have been one of the most significant standards for measuring "quality

education", (b) efforts are continually made to meet Board-set standards for pupil-teacher ratios, (c) increased appropriations for more teachers are justified on a need to reduce pupil-teacher ratios, and (d) the teachers, through the Washington Teachers Union, and the Board find pupil-teacher ratios so significant as to be currently negotiating over class size goals (see Memorandum dated May 3, 1971 to Board and Board Proposal for Article XXV, Paragraph 7 of contract with Washington Teachers Union, Exhibit A annexed hereto).

For the foregoing reasons, Charles I. Cassell and Bardyl R. Tirana are of the opinion that the memoranda filed by the Corporation Counsel do not accurately reflect the position consistently taken by the Board on providing higher salaries to more experienced teachers, and as to the educational significance of low pupil-teacher ratios.

Respectfully submitted,

Charles I. Cassell

Bardyl R. Tirana
Members, Board of Education
415 Twelfth Street, N. W.
Washington, D. C. 20004

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing separate statement upon Peter Rousselot, Esq., 815 Connecticut Avenue, N. W., Washington, D. C. 20006, attorney for plaintiffs, and upon C. Francis Murphy, Esq., Corporation Counsel, District Building, Washington, D. C. 20004, attorney for defendants, by mail, this 14th day of May, 1971.

Bardyl R. Tirana

Mr. Tirana

BOARD OF EDUCATION OF THE DISTRICT OF COLUMBIA
PRESIDENTIAL BUILDING
415 TWELFTH STREET, N. W.
WASHINGTON, D. C. 20004

May 3, 1971

Memorandum to: Members, Board of Education

From: Mr. Edward L. Hancock E.L.H.

The Committee on Employee Relations held a conference on April 12, 1971 and on April 29, 1971 and heard progress reports from the Board's Negotiations Team on negotitations with the Washington Teachers' Union.

On behalf of the Committee, I an enclosing for your information the Board's changes proposed for negotiations with the Washington Teachers' Union, and the Washington Teachers' Union proposed changes in the Agreement.

4/14/71

BOARD PROPOSAL

ARTICLE XXV. POLICIES RELATING TO WORKING CONDITIONS OF TEACHERS

7. Class Size

a. The Board shall strive to achieve the following average class size goals:

i. 15 for pre-kindergarten (non-compulsory)
ii. 20 for kindergarten through grade 2
iii. 25 for grades 3 through 6
iv. 25 for secondary academic classes
v. 12 for remedial classes
vi. 8 for retarded and emotionally disturbed, sight conservation, or hearing classes
vii. 18 for industrial arts and home economics classes
viii. 18 for shops in vocational high schools

8. Program Assignments

a. Teachers may express in writing to the head of the school their preference of subject, department, and assignment, extra-curricular assignments, and school committees. Before making such assignments, the head of the school,shall give the faculty an opportunity to discuss such assignments with hime and among themselves and also to discuss school plans, goals, course offerings, grade levels, subjects and personnel needs for special programs. Proposed organizational assignments shall be presented at least ten days before the close of school in June and these shall be subject to revision for good cause.

Requests shall be kep on file by the head of the school for one school year in an accessible place in the school. These requests shall be honored, as vacancies occur in the building, on the basis of seniority, priority of request in cases of equal seniority, and competency of the individual in the judgment of the head of the school. In the matter of assignment of teachers to subject classes and grade levels, the request of the teacher will be honored by the principal when the request is consistent with the educational needs of the school.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON et al.,

Plaintiffs

v. Civil Action No. 82-66

CARL F. HANSEN et al.,

Defendants

O R D E R

In their further supplemental memorandum to the court filed January 26, 1971, plaintiffs state that "we do not agree with many of the points raised in defendants' reply memorandum (and accompanying analysis) of January 18, 1971." In order to give plaintiffs an opportunity to state the points on which they disagree and the reasons for that disagreement,

It is ORDERED that plaintiffs have until February 15, 1971 to file a further memorandum if they choose to do so.

J. SKELLY WRIGHT*
UNITED STATES CIRCUIT JUDGE

Washington, D. C.

January 27, 1971

*Sitting by designation pursuant to 28 U.S.C. § 291(c) (1964).

HOGAN & HARTSON
815 CONNECTICUT AVENUE
WASHINGTON, D. C. 20006

TELEPHONE
(202) 298-5500

CABLE ADDRESS
"HOGANDER"

TELEX: 64353

COUNSEL
LEE LOEVINGER
JAMES C. ROGERS

April 15, 1970

Mr. Julius W. Hobson
Washington Institute for Quality Education
300 M Street, S.W.
Washington, D.C. 20024

Dear Mr. Hobson:

Enclosed, for your information, are selected excerpts from transcripts of the meetings of the D.C. Board of Education held between July 1, 1967 - March 18, 1970.

Excerpts from the period of time you were on the Board are contained on pages 6-11 of the attached document. If there are any other significant excerpts from the period of time you were on the Board which you would like to call to my attention, please let me know.

I assume that we will be able to make some use of some of this material in our motion.

I look forward to receiving from you the transcript of the prior trial to be obtained by you from Mr. Kunstler.

Sincerely,

Peter F. Rousselot

Peter F. Rousselot

PFR:lme

Enclosure

Dr. Carroll: Does that answer your question?

Mrs. Allen: I think so.

TRANSCRIPT

Meetings of Board of Education

(July 1, 1967 - March 18, 1970)

Second (Special) Meeting, July 1, 1967

p. 2 Dr. Alexander: "Mr. President, I would like to move that the Board of Education accept the ruling of Judge Wright and proceed to carry it out with all deliberate speed ***".

p. 7 Mrs. Allen: "It would seem to me that we could move to implement all of the judge's decree but ask for additional time until January 2 so that we might have the benefit of the recommendations made by Dr. Passow ***."

p.14 Mrs. Stults: "*** I would hope that Judge Wright would agree to discuss with us implementation of the parts of the decree so that the Board could take advantage of the recommendations of experts in education in formulating its plans for compliance."

Fourth (Special) Meeting, July 10, 1967

pp.6-7 Although only 25,000 D.C. children had been identified as educationally deprived under Title I, the FY 1967 and FY 1968 funds under Title I were being given to 66,000 children:

Dr. [Joseph] Carroll, [Assistant Superintendent]: "There are a total of 66,000 enrolled. Within that 25,000 project children have been identified as those who are most likely to fail because of severe problems which they have exhibited already. We are attempting to concentrate on those identified children and we also have some programs which will affect the schools as a whole--not only those individual children."

p.9 Dr. Carroll: "I realize this is not the intent of the law."

p.p. 9-10 Ass't. Super. Mrs. [Aileen] Davis [re Title I]: "13 new schools will be added. We have to identify out of the 13 schools other students that will be potential dropouts. We haven't identified those. Last year, we identified 25,000 and beginning in the fall--it will be in the neighborhood of 35,000 out of the 60,000 or more."

Dr. Carroll: Does that answer your question?

Mrs. Allen: I think so.

Fifth (Special) Meeting, July 11, 1967

p.10-11. Mrs. Allen: "In my opinion it is not the responsibility of this appointed Board of Education to work out procedures for implementing this decree. *** now we need to have staff work ***."

p.11 (cont.) *[Mrs. Allen]: "What I would like to propose is that the Board direct the Deputy Superintendent, Acting Superintendent, Acting Deputy Superintendent, or whoever happens to be in charge at the time, to develope [sic] cooperatively on the staff proposals for implementing the decree ***."

pp.21-22 Dr. Sessions "One of the unfortunate things about the data on which the Wright decision is based is that this data is three years old and I expect a great deal of that would be different if we would use the current data ***. *** I take it for instance that in the first decree, the one relating to discrimination the defendants are permanently enjointed [sic] from discrimination on the basis of racial and economic status. I take it he is referring to the difference in per pupil expenditure in the low income schools and the schools west of Rock Creek Park. My guess is that differential would be mush [sic] smaller now. His figures were based on a period before the elementary-secondary act was in effect, and that is on the low income schools ***.

p.22 Dr. Sessions "*** I expect that Section I [of the decree] has been pretty well taken care of now by the impacted aid program and by the elementary and secondary education program."

Ninth (Special) Meeting, September 6, 1967

p.66 [Ass't Super. Rufus C] Browning: "[A] year ago, ninety plus percent of our teachers were coming in on a temporary basis. In the meantime, and since you [Passow] initiated your study, over two-thirds are now coming in on a probationary basis. A year ago plus a few months, we had 48 percent of our teachers in a temporary capacity. That is, they had temporary certificates. That is now less than thirty percent."

Tenth (Stated) Meeting, September 20, 1967

p. 5 Dr. Sessions objects to concentration of Title I funds: If the suggestion in a letter received from John Hughes "is that Title I funds should be concentrated on fewer schools, then I think this is a very dangerous suggestion".

pp. 6-7 Mrs. Allen: "Mr. Hughes is pointing to a very serious problem and making an indictment of the D.C. schools Title I program. The indictment is not that we have a lot of kids who need help. *** The indictment is that *** the limited funds that we have are being spread so thin that no substantial impact on any child is taking place. *** *** [W]e look pretty bad, we look real sick in the average per pupil expenditure, which should be high and not low, when these reports come out."

Meeting of the Board, Oct. 18, 1967

p. 68 Mr. Smuck: "The number two item is a request by Mr. Henley for the approval of a state plan to submit to the Office of Education under the Elementary and Secondary Education Act of 1965. This plan will serve as a guide for the use of funds for several years to come" [it was approved.]

22d Special Meeting of the Board, Dec. 29, 1967

p.18 Assistant Corporation Counsel: Mr. Gimble: "The Court's decree states that these plans are to be submitted to the Court for its approval. I would not presume to judge what Judge Wright would decide with regard to the sufficiency of the reports."

35th Special Meeting, Bd., May 1, 1968

pp. 26-28 Mr. Eric W. Beshers, Chairman of the Northwest Parents' Action Group, recommended on behalf of the group that per pupil expenditure equalization, as ordered by Judge Wright, was not enough:

p.27 "Judge Wright's opinion took the Board of Education and its School Administration to task for a pattern of per-pupil

expenditures that was lower in poor sections of the city than in better-off sections of Washington. Judge Wright ordered that per-pupil expenditures be equalized across the city. We believe that this is not enough. Meaningful efforts to bring decent education to Washington's poor will require a reversal of this pattern, not just an equalization. The Northwest Parents' Action Group has adopted a resolution on this issue which reads as follows:

The Northwest Parents' Action Group notes with interest the statement made by the Superintendent of Schools, William R. Manning, on February 28, 1968, that he will recommend"a plan to provide for differential expenditures by school" because some schools need more money per pupil than others to effect true equalization;

Encourages the Superintendent of Schools and the School Administration to formulate proposals to implement the state-

p. 28 ment for inclusion in the school budget for 1969-70 now in preparation;

Believes the principle of heavier expenditures in schools serving educationally disadvantaged pupils should be implemented, even if this postpones desirable programs in schools our children attend; ***

Accordingly, we urge that this principle be reflected in the FY 1970 school budget, and that it go beyond the allocation of impacted aid and Title I money in this matter and that allocation of funds on such a basis be reflected in the regular operating budget."

[Meeting of June 26, 1968, Transcript, Missing.]

3rd Special Meeting of the Board of Educ., July 15, 1968

p.20 William Manning: "For the last three years, I guess it is, we have been participating in programs financed through the elementary, secondary education act. We have been carrying on programs in 90 plus schools, programs of varied nature."

****

"[M]ost of us have been guided by a philosophy in the past of tending to share this in the areas where it is needed."

"However, the results naturally have not been too effective."***

p.21 "We have been reminded that it was the intent of Congress to concentrate these funds in the areas within the school district that was of greatest need recognizing that there may be other needs, but we should be selective in the concentration of these funds.

"We were reminded some months ago by the Office of Education that it had developed or in guidelines that it had developed that we should take a look at all of our programs under Title I of the Elementary, Secondary Act, and attempt to focus these funds on a much smaller area.

"As a matter of fact, the indication was that if we did not do so, it was questionable whether some programs would be approved."

pp.28-33 Sessions, Haynes oppose concentration.

p.42 The 95 Title I participating schools were reduced to 33 in proposal.

p.44 Title I proposal tabled.

Fifth Special Meeting of the Board of Education, July 17, 1968

p.134 Dr. [Robert] LaPenna [Executive Study Group, Bd. of Educ.]: "The Executive Study Group recommends that the variety and quantiti [sic] of materials and resources available to the D.C. Schools be greatly expanded.

"Each school should have a mulimedia center which meets the latest American Library Association standards."

Special Meeting of the Bd., July 30, 1968
(reconsideration of Title I program)

p.5 Dr. Sessions: "We have been told again and again that the law requires that we concentrate these funds [Title I] in a geographical area. The fact of the matter is that the law requires no such thing whatever."

pp.7-8 Dr. Sessions: "[E]very child who lives in a low-income family anywhere in the District of Columbia is counted when we figure out the allotment that we are entitled to under Title I, but we should not count every child in the District of Columbia when it comes to spending our allotment."

"I submit this is a very unfair approach."

p.12 Mr. Manning: "There was a time when we thought we were providing equal educational opportunity when the same amount of dollars were provided for each youngster within a school district or within a state or within a region. Now, of course, we have come to the conclusion that if one is going to truly equalize education opportunities that the requirement is that some youngsters will require more programs, which means, of course, more funds would have to be spent upon them in order to equalize the opportunities for them.

[Title I proposal of Manning to concentrate funds were reaffirmed.]

[Organizational Meeting of First Elected Bd.of Educ., January 27, 1969]

Special Board Meeting, July 2, 1969

p.42 Re request to check with Judge Wright on proposed boundary changes:

Mrs. Allen: "I feel that I am going to have to vote against the proposal that we go to Judge Wright.

First of all, the data on which Judge Wright based his decree--are now several years old--and may or may

p.43 not be/just as adaptable.***

[I]t would seem to me that it would be an awful lot better if the Board did decide what it wanted to do,

what was right to do--and then did it.

If we are illegal, we will find out soon enough."

[The motion to check the boundary changes with Judge Wright was withdrawn.]

p.61 Mr. Hobson: "This committee is not to [sic] going to Judge Wright but to come back to the Board of Education with the report on the data which we have. That is what I am going to do with these data.

"Now, if it comes back to the Board of Education and the Board of Education says "Go to hell, "then I will step out of my role as a Board member and into my role as a "parent."

Board Meeting, July 7, 1969

p.88 President Coates: "Our next committee Report is the Implementation of the Wright decree."

pp.88-92 Mr. Hobson presents the Report.

p.89 Mr. Hobson: "It is apparent from this preliminary data that the school administration has failed or refused to implement what is now the law of the District of Columbia--the Skelley [sic] Wright decree in the Hobson vs. Hansen case upheld by the United States Court of Appeals."

p.90 Mr. Hobson: "As a member of the Board of Education, I am now in the position of being a defendant in my own case and am therefore subject to the same penalties as can be imposed upon the administration for their apparent contempt of United States District Court."

p.90 Motion on Textbooks. Limited to Textbooks Only.

p.91 Request for textbook/pupil equalization (part 3.d.)

p.93 Manning claims he complied with the Wright decree and admits that Hobson's committee's requests produced the first central inventory of books and equipment ever made in the District of Columbia.

p.91 Manning passes the buck: "We thought that inasmuch as the Wright Committee had been working ever since this new Board has been in operation, it would have been a little presumptious for us to have moved ahead in terms of developing any specific proposal. I think that really this is a policy matter that comes from the Board of Education."

pp.96-97 Mr. Allen passes the buck back to Manning: "It seems to me there is nobody on the Board who can take a thousand pages of figures and come up with a policy. And I do not think it is our obligation as individuals to do that; to see that it is done, but not to do it.

p.97 Mrs. Allen (cont.): "I would like to know whether or not the Administration has in fact been analyzing the facts which have been turned over so the Administration knows what these figures mean."

p.99 Mr. Hobson refers to areas dealt with by the Wright decision that have not been corrected: distribution of books; expenditures per pupil; temporary teacher distribution; equipment and supplies distribution. "A plan sent to the Court where nobody follows through on the plan is not implementing this decree."

p.104 Mrs. Allen: "[I]t is not evident to me from looking at the data what the situation is, except that there are uneven allocations of resources. *** [I]t is a crazy kind of quiltwork pattern of distribution of resources." [emphasis added.]

p.104 Mrs. Allen makes a substitute motion to have a Board-appointed Civil Rights lawyer, whom she has in mind, analyze the data. Plus have Manning analyze it.

p.111 Mr. Hobson: "I am not going to argue with you any more, you get yourself a lawyer and argue before Judge Wright on it."

Mrs. Allen: "All right, I will get before Judge Wright. I do not care anything about Judge Wright." [emphasis added]

p.111-112 Mrs. Swaim correctly states the inter-relationship between Title I funds and regular budget allocations.

p.116 Mrs. Allen: "I simply do not feel that we have got all of the expertise that we need to figure out what it is we ought to be doing in the time we have to do it."

Next Meeting, July 30, 1969

pp.3-4 William Manning's "leave of absence" authorized.

Board Meeting, August 1, 1969

p.38 Mrs. Allen: [not talking specifically about Title I]: "There are some complications with respect to the District of Columbia Board of Education being both a state board and a local board***."

p.39 Then Mrs. Allen mentions Title I plus "The money for Federal administration is being squandered."

p.40 Mrs. Allen: "[W]e ought to do something to try to pull together responsibility and accountability."

p.40 Mrs. Allen: "At least, you should be able to point the finger at somebody and ask: "What is happening?" "Right now, we cannot do that; we do not know who the person is."

Board Meeting, August 22, 1969

p.3 Mr. Hobson disqualifies himself from consideration of defense of motion for enforcement filed in July, 1969.

p.5 Mrs. Allen: "Then the motion is carried that the Board requests the Corporation Counsel to represent the Board in Civil Action No. 8266 [sic], and that the Counsel be requested to consider filing to vacate the decree in the case of Hobson versus Hansen on the basis of substantial compliance by the Board with the decree."

Board Meeting, September 26, 1969

p.55 Mrs. Allen: "[W]e are under a legal obligation to equalize or to compensate with our regularly appropriated funds." [There is an extended discussion at this meeting of the problem of privately donated library books.]

Bd. Meeting, November 19, 1969

pp.81-91 Mr. Hobson presents his report on abuses under the Tuition Grant Program.

p.84 Mr. Hobson: Discussion of the Gregg School: "Of the 18 children at Gregg, 11 live in neighborhoods where the medium [sic; median?] family income or the income range is $10,000 or [sic] $10,999 per year. There is only one poor child on this list at Gregg of 18 children, living in a community where the medium family income or the income range is $4,000 to $4,999. The Gregg School is designed to deal with children who have average to higher than average I.Q.'s and are college bound by their own definition."

pp.86-87 Mr. Hobson: "[I]n the Fiscal Year 1969 the President's Committee on Mental Retardation estimated that only 2500 of the children that I have talked about were being served by the D.C. Public School's facilities. The report prepared by the Division of Special Education regarding tuition grants adds 302 children to this total. Thus leaving 19,554 children who fall in these retarded categories or exceptional children categories without any help whatsoever in the D.C. Public Schools, while we spend a total of 678 thousand dollars per year on 302."

p.90 Mr. Hobson: "I recommend that the Board of Education *** order the suspension of new tuition grants until such time as the Department of Special Education can produce an accurate report as to the numbers of children active in these programs and the amount of money spent in their behalf."

Board Meeting, January 21, 1970

p.58 Mr. Hobson policy statement: "Unless there is a drastic change in the school administration, board members are going to have to learn to be experts on administration as well as policy making in order to assure the implementation of their policies."

p.60 Mr. Hobson: "Above all, what this Board needs is some way of finding out how and when its policies have been implemented."

Board Meeting, January 26, 1970

[organizational meeting of new board.]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 82-66
CARL F. HANSEN, et al.,	:	
Defendants.	:	

Plaintiffs' Further Supplemental Memorandum to the Court.

Although we do not agree with many of the points raised in defendants' reply memorandum (and accompanying analysis) of January 18, 1971, one point merits comment in order to avoid confusion. On August 12, 1970, this Court requested that a calculation be made of "the statistical correlation between deviation from mean per pupil expenditure out of regular funds and deviation from mean 1959 median family income". At page 2 of their reply memorandum of January 18, 1971, defendants made the erroneous statement that a correlation of +.100 is not statistically significant. In rebuttal, plaintiffs herewith submit the attached memorandum by Stephan Michelson entitled Interpreting "Statistical Significance" In Samples From Finite Populations.

The attached memorandum shows at pages 5-7, that defendants' experts' assertions about statistical significance would only be true if one were trying to draw conclusions about the relationship between income level of the neighborhood and expenditures per pupil in elementary schools throughout the United States from the data now before this Court. Since, by contrast, the concern of such correlations in this case is limited to elementary schools in the District of Columbia, defendants' experts' assertions about statistical significance, particularly the one in the

second full paragraph on page 24 of their analysis, are incorrect.

As noted at page 5 of the attached memorandum, the correlation in this case of +.100 between expenditures per pupil for teachers salaries and benefits in fiscal 1970 and 1959 median family income "is significant beyond the capacity of ordinary tables to distinguish from certainty".

Respectfully submitted,

Peter F. Rousselot
815 Connecticut Avenue
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Certificate of Service

I, Peter F. Rousselot, hereby certify that: three copies of the foregoing Plaintiffs' Further Supplemental Memorandum to the Court, together with the attached Affidavit and Memorandum of Stephan Michelson, entitled Interpreting "Statistical Significance" In Samples From Finite Populations were delivered by hand this day of January, 1971, to Thomas R. Nedrich, Esquire, Room 308, District Building, Washington, D. C., an attorney for defendants; and that one copy of the aforementioned documents were sent by first class mail, postage prepaid, on the same day, to: John A. Bleveans, Washington Lawyers'

Committee for Civil Rights Under Law, 1025 15th Street, N. W., Washington, D. C. 20005, Attorney for intervenors Elizabeth A. Budd, et al.; to Don R. Allen, 1775 K Street, N. W., Washington, D. C. 20006, attorney for intervenors Mr. and Mrs. William Bennett; and to Stephen B. Ives, Jr., 1320 19th Street, N. W., Washington, D. C. 20036, attorney for intervenors Richard T. Stout, et al.

Peter F. Rousselot

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al., :

Plaintiffs, :

v. : Civil Action No. 82-66

CARL F. HANSEN, et al., :

Defendants. :

Affidavit of Stephan Michelson

District of Columbia, ss:

Stephan Michelson, being duly sworn on oath, deposes and says that he is the author of the attached memorandum entitled Interpreting "Statistical Significance" In Samples From Finite Populations.

_____

Stephan Michelson

Sworn and subscribed to before me this day of January, 1971

_____

Notary Public, D. C.

My Commission expires:

INTERPRETING "STATISTICAL SIGNIFICANCE" IN SAMPLES FROM FINITE POPULATIONS

Stephan Michelson
January, 1971

Statistics is the science of inference from incomplete data. A lightbulb manufacturer may hire a statistician to infer, from a sample of bulbs selected randomly from the production line, the expected lifetime of a bulb, or the chance of a bulb failing before a certain number of hours. This is a statistician's problem because it is necessary to sample the bulbs.[1/] We could know for sure what the average life of a bulb was, and what percentage burned out before X hours, if we tested them all. We would not need a statistician for this purpose. However, then there would be no bulbs left to sell.

The basic function of statistics, then, is to draw an inference to a population (say, all lightbulbs from that production line) from a sample.[2/] In education, this sampling aspect is usually obvious. If we take 500 6th grade children and try to ascertain the relationship between their teacher's college major and their achievement in mathematics, for example, then presumably we are interested in making a statement about this relationship in general. That is, we wish to infer a population relationship (the population being all sixth grade children) from a sample. The larger the sample, the more accurate our inference is likely to be. The size of the population is essentially infinite. The population includes not only the approximately 4

1/ "The obvious purpose of sampling is to learn something about the population distribution; i.e., to engage in statistical inference." Goldberger, p. 88.

2/ To be complete, note that in deductive statistics one uses knowledge of the population to draw inferences about the sample. I am concerned here only with inductive statistics.

million sixth graders in any one year in the United States, but those in future years, and perhaps in other countries as well.

Tests of "statistical significance" are merely formulas for asking what the probability is that the true population value lies within some interval related to sample value, for a given statistic. "Significant at the five percent level", where a range of values is not specified, means that the chances are less than 1 in 20 that the true population value of the statistic is outside the interval between zero and the sample value. It is essentially a test of the sign of the estimate. A correlation of .10 "significant at the 5% level" means that the occurrence of a .10 correlation in a sample of this size would occur only 1 time in 20 from a population in which the correlated items were related negatively or not at all. The implied interval of interest is that between 0 and .10, and "significance" refers to the positive sign. The full phrase is "significantly different from zero." When the correlation coefficient (or other statistic) is to be related to some number other than zero, that number, or the interval between that number and the sample statistic, will be specified.

When the population is not infinite the same statistical question can be asked: what is the probability that the true population statistic is within some interval related to the sample estimate -- usually the interval between the sample estimate and zero? It is both logical and mathematically correct to ask whether the size of the sample relative to the size of the population should be taken into account. With an infinite population the only factor considered was the sample size. But though a sample size of 15 is, for most statistical purposes, very small, if the population size is 20, then that sample size seems reasonably large. Specifically, in a sample of size 15

tested according to an infinite population, two items must attain a correlation coefficient of .514 to be considered "significantly correlated at the five percent level."[3/] This means that an observed correlation of less than .514 might be found from a sample of fifteen more than one time in 20 even though the true (population) value were actually negative. We would reject as "insignificant" any correlation below .514, say, .30.[4/] With a total population of 20, however, the picture is quite different. Having found a correlation of .30, we have to imagine how perverse the missing five observations must be -- how different from our sample -- for the actual correlation to be negative.

Suppose the correlation were between the income of parents in the neighborhood in which a school was located, and the expenditures per pupil on that school. Suppose there were 20 schools in the district, but data was available on only 15. Suppose lastly that there is no known reason to believe the remaining five schools are peculiar; i.e., we believe the fifteen schools represent a random sample of the 20 schools. If the observed .30 correlation is far higher than the true correlation, the remaining five schools would have to show a negative relationship between income and expenditure. In addition, they would have to have extreme values of these items, since they are only five points balancing fifteen. High income would have to be associated with low expenditures, and low income with high expenditures. Suppose we knew that the fifteen schools included all the highest income schools in the district. Then the only schools

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3/ Two-tailed test, 5% level, from Fisher and Yates.

4/ We will not discuss the problem of considering "significant" those statistics which survive the 5% test, but "insignificant" those which fail, no matter how close they come.

which could change the correlation to negative would be low income schools with high expenditures. Yet we have assumed that the remaining schools are not known to be peculiar. Then it is virtually impossible that the relationship between income and expenditures in these remaining five schools could reduce the correlation below 0, though it might reduce or increase the overall correlation to some extent. Since significance means that the population coefficient is highly likely to be positive and this is the case here, surely the .30 is highly significant.

Mathematically, we apply a "finite population correction" to this case.[5/] Using the following symbols:

N = population size

n = sample size

the correction factor is

$$C = \sqrt{\frac{N - n}{N - 1}}$$

This correction factor is applied multiplicatively to the standard error -- that is, the estimate of the standard deviation of sample means which is calculated from the sample's variation. Clearly where N is infinite this correction factor is unity. Similarly, when the sample is the entire population (n = N) the correction factor is zero, indicating that there is no sampling variation around the mean of a "sample" which constitutes the entire population.

The significance of a correlation coefficient is tested by the t-statistic.[6/] The standard error occurs in the denominator of a t-statistic. Thus we can correct t-statistics for small

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5/ See for example Cochran pages 23-24. It should be noted that economists are not trained in differentiating finite from infinite populations. The issue is not discussed in either Goldberger or Johnston, for example. However, finite population problems are discussed in any advanced book on mathematical statistics, and at least mentioned in most statistics texts. See, for example, Wilks for statistical theory or Lindgren or Roscoe for mention of the problem.

6/ For use of t-statistic to test correlation, and the formula used to derive a t-statistic from a correlation coefficient and sample size, see Johnston, p. 33.

populations by dividing them by the correction factor. After correction, the tables relating t-statistics to probability levels will apply. The t-statistic for a correlation of .30 from a sample of 15 is 1.134. The correlation .30 seems clearly insignificant -- even at the 20% level. However, applying the appropriate correction -- $\sqrt{\frac{5}{19}} = .513$ -- to the t-statistic we get, (1.134)/(.513) = 2.21. This is significant at the 5% level; in fact, at better than the 3% level. It indicates that with a population of 20, a sample of 15, and the variation observed in the sample, it would be very unlikely (less than 3 chances in 100) that the population correlation was in fact negative.

Applying this correction to the Hobson case in which we observe 123 schools from a total of 132 schools -- a sample containing 93% of the population -- we have the following:[7/]

r = .10 (correlation coefficient)

C = .262 (correction factor)

t (calculated on the basis of an infinite population, sample size 123)

= 1.06 significant at no better than the 29% level

t corrected for finite sample size

= (1.06)/(.262) = 4.03

which is significant beyond the capacity of ordinary tables to distinguish from certainty.

Indeed, with this correction, even a correlation of .05 is significant at the 5% level, though not at more stringent levels. If the question is strictly put, "Does the observed .10 correlation from 123 schools indicate that the correlation for all

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7/ This is the case at issue when Dave O'Neill asserts "we feel impelled to point out that Michelson's assertion that his value [of a correlation coefficient] of .100 is statistically significantly different from zero, in a statistical sense, is just wrong." O'Neill has used an uncorrected t-statistic, apparently because he has not thought out the statistical question being asked.

schools (between the same two items) is in fact greater than zero?" then the answer must be "Yes." This is the same as asking "Is a correlation coefficient of .10 for a sample of 123 from a population of 132 statistically significant?" The answer is "Yes." All it takes is an understanding of what the question is, and some knowledge of finite population statistics.

Finally, a note on when it is appropriate to make a finite population correction. Suppose the sample of 123 schools is being used to discover a technological relationship (such as the presence of economies of scale) or an educational relationship (such as the effect of college major on mathematics scores, as above). In these cases, the relationship is probably not to be considered specific to the sample, but a matter of educational technology and practice throughout at least the United States. The sample is 123 schools out of the thousands of elementary schools in the nation. The population is essentially infinite.

However, suppose the question is about the particular way in which a certain district allocates funds or resources. The question then is about that particular school board's (or superintendent's) behavior. If the question is "does the school allocation policy favor the rich?" then a simple comparison of expenditures on rich children (or schools containing rich children) should suffice.[8/] If (and only if) the comparison is made with less than the complete population is a statistical question involved. This is the question: Is the observed difference likely to be found from a total population in which there is in fact no difference, given the percentage of the population which is included in the sample? I repeat that this is

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8/ Actual comparisons may have to control for such factors as special programs in certain schools, or scale economies, if there is an estimate of these.

the only statistical question which can be asked in this case. To compare this sample to an infinite population is to obscure the issue that is being argued: whether the allocation in that district is favorable to the rich. If data are given on the total population then there is no question of statistical significance as long as the issue involves that particular district's behavior. Statistical questions involve inference from a sample to a larger population, in this case, the population of all schools in this district. Whether this district's data imply that other districts discriminate may not be at issue, and if not, statistical tests uncorrected for finite population are inaccurate and incorrect.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al., :

Plaintiffs, :

v. : Civil Action No. 82-66

CARL F. HANSEN, et al., :

Defendants.

MOTION OF DEFENDANTS FOR THE COURT TO RESCIND ITS ORDER

Defendants respectfully move the Court to rescind its order, filed sua sponte, on January 28, 1971, ordering defendants to file with the Court not later than February 15, 1971, such statistics and studies as will show the effect of the volunteer busing program on pupil achievement test scores. As grounds therefor, defendants say that the order imposes an unduly burdensome task upon the defendants and that the order will not lead to probative evidence. In support of their motion, defendants pray that the Court read the Affidavit of Wilbur A. Millard and the Affidavit of Evelyn Ehrman, attached hereto and incorporated herein by reference, as well as the memorandum filed herewith. Defendants request oral argument of this motion.

Respectfully submitted,

C. FRANCIS MURPHY
Acting Corporation Counsel, D. C.

JOHN A. EARNEST
Assistant Corporation Counsel, D. C.

MATTHEW J. MULLANEY, JR.
Assistant Corporation Counsel, D. C.

THOMAS R. NEDRICH
Assistant Corporation Counsel, D. C.

Attorneys for Defendants
District Building
Washington, D. C. 20004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion of Defendants for the Court to Rescind Its Order, the affidavits attached thereto, and the Memorandum of Points and Authorities in Support Thereof, was hand-delivered to Peter F. Rousselot, Esq., Attorney for Plantiffs, 815 Connecticut Avenue, N. W., Washington, D. C. 20006, this 16th day of February, 1971.

Assistant Corporation Counsel, D. C.

Attorney for Defendants
District Building
Washington, D. C. 20004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al., :

Plaintiffs, : Civil Action No. 82-66

v. :

CARL F. HANSEN, et al., :

Defendants. :

AFFIDAVIT OF WILBUR A. MILLARD

DISTRICT OF COLUMBIA, ss

Wilbur A. Millard, being first duly sworn upon oath, deposes and says that he is the Assistant Superintendent in charge of the Department of Pupil Personnel Services. In that capacity, he is familiar with the pupil achievement testing program conducted by the public schools of the District of Columbia.

Since September, 1967, when the public schools initiated a volunteer busing program pursuant to the decree of the Court, the following achievement tests have been administered in the elementary schools of the District of Columbia:

1967-68 - Grade 2, Metropolitan Achievement Test; Grades 4 and 6, Sequential Tests of Educational Progress;

Spring, 1969 - Grade 2, Metropolitan Achievement Test; Grades 4 and 6, Sequential Tests of Educational Progress;

November, 1969 - Grades 3 and 6, Comprehensive Tests of Basic Skills;

March, 1970 - Grades 4 and 6, 10% random sample, Sequential Tests of Educational Progress;

September, 1970 - Grade 2 California Achievement Test; Grades 3, 4, 5 and 6, Comprehensive Tests of Basic Skills.

Upon completion of test papers by the pupils, the test papers are forwarded to the publisher for scoring. A copy of the individual pupil's test scores is returned by the publisher directly to the principal of the school the pupil is attending for inclusion in the pupil's individual folder. A pupil's individual folder moves with him as he moves from one school to another by virtue of graduation or transfer.

Another copy of the pupil's test scores is forwarded by the publisher to the Administration where it is stored. Summaries of test scores by school and by grade are furnished to the Administration by the publisher. From time to time these summaries are made public. Individual test scores are not made public. While a copy of all individual test scores is centrally stored, individual test score data have never been collected for pupils engaged in the volunteer busing program. The data having never been collected, no study of changes in achievement, if any, for bussed pupils has been made.

The Comprehensive Tests of Basic Skills (hereinafter CTBS) are published by the California Test Bureau/McGraw-Hill. They are standardized upon the nation as a whole and upon large city pupil populations. Results are expressed in grade equivalents and single percentile figures.

The Sequential Tests of Educational Progress (hereinafter STEP) are published by the Educational Testing Service, Princeton, N. J. They are standardized upon a national pupil population. Test results are expressed in terms of a percentile band, and converted score.

The Metropolitan Achievement Test is published by Harcourt, Brace and Javonovitch. It is standardized upon national norms and results are expressed in terms of grade equivalents.

The California Achievement Test is published by California Test Bureau/ McGraw-Hill. It is standardized upon a national population and upon a large city population. Results are expressed in terms of grade equivalents.

The publishers of the foregoing tests have not published test conversion scales that would permit comparisons of test scores among different test series from different companies. For example, conversion scales are not published for the STEP and CTBS which would allow comparison of test results.

WILBUR A. MILLARD

Subscribed and sworn to before me this 12th day of February, 1971.

Notary Public, D.C.

My commission expires:

9-1-74

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al., :

Plaintiffs, :

v. : Civil Action No. 82-66

CARL F. HANSEN, et al., :

Defendants.

AFFIDAVIT OF EVELYN EHRMAN

DISTRICT OF COLUMBIA: ss

Evelyn Ehrman, being first duly sworn upon oath, deposes and says that she is an employee of the Board of Education assigned to the Department of Pupil Personnel Services.

The Department of Elementary Education has made available to her responses to a survey of ten elementary schools, nine of which are located west of Rock Creek Park, and which are currently receiving pupils bussed under the volunteer busing program. Upon information and belief, it is stated that the attached documents, a Notice to Principals Concerned, dated February 3, 1971, and a Testing Information response sheet, also dated February 3, 1971, were forwarded to these ten schools for response.

She has examined the responses returned to the Department of Elementary Education and finds the following with respect to the 457 pupils being bussed to these ten elementary schools:

119 - Are attending grades 3 through 6 and have joined the busing program for the first time in September, 1970 or later. These pupils would have been in the receiving school less than a month before taking an achievement test, the Comprehensive Tests of Basic Skills;

63 - Are attending the first or second grade and have only received a single achievement test in September, 1970, the Comprehensive Tests of Basic Skills;

133 - Have only been tested once during their elementary school experience;

142 - Have achievement test scores for two or more years.

A preliminary survey of the tests taken by these 142 pupils reveals that 53 of them have taken the Comprehensive Tests of Basic Skills (CTBS) twice in the past two school years. Nearly all of the 53 are presently fourth graders who have taken CTBS in September, 1970 and who also took CTBS in November, 1969 when they were in the third grade. A few of the 53 have been tested twice with CTBS in the sixth grade, apparently having been held back a year. All of the 53 pupils have been in the volunteer busing program longer than the current school year. Hence, all or nearly all of these pupils were also in the receiving school in November, 1969 when they took CTBS as third graders. No comparable test score is available for these pupils in their sending schools.

The remaining 89 pupils (142 less 53) have taken tests for which there are no conversion scales, most frequently one CTBS and one Sequential Tests of Educational Progress (STEP).

Evelyn Ehrman
EVELYN EHRMAN

Subscribed and sworn to before me this 12th day of February, 1971.

Eleanor McDonald
Notary Public, D. C.

My commission expires:

9-1-75

PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA
Department of Elementary Education
Presidential Building
415 - 12th St., N. W.
Washington, D.C. 20004

February 3, 1971

Notice to Principals Concerned:

We are continually being asked by the Courts for information relative to the original Hobson vs. Hansen suit. We are now being asked to submit information relative to the test scores of our bussed children.

Please complete the attached form immediately, using the following guidelines:

1. Include all children on the current bus schedule;

2. Group children by current grade beginning with the sixth grade;

3. It is understood that all children will not have all tests for each year;

4. Call Mrs. Evelyn Ehrman, Department of Pupil Appraisal, 737-1361, 629-4761, if you have any questions concerning the recording of the information;

5. Immediate attention is urgent.

Bradford A. Tatum

Bradford A. Tatum
Assistant to Assistant Superintendent

Attachment

PUBLIC SCHOOLS OF THE DISTRICT OF COLUMBIA
Department of Elementary Education

February 3, 1971

TESTING INFORMATION re PUPILS IN BUSSING PROGRAM

_____ School
_____ Principal
_____ Date

			Yr. 1970-71		Yr. 1969-70		Yr. 1968-1969			
			CTBS		CTBS		MET.ACH.		S.T.E.P.	
E	Present Grade	Number Years Sch Pres. Yr.	Reading Total	Arith. Total	Reading Total	Arith. Total	Reading ST. SC.	Arith. ST.SC.	Reading Conv.SC	Arith. Conv.SC

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Plaintiffs,	:	
v.	:	Civil Action No. 82-66
CARL F. HANSEN, et al.,	:	
Defendants.		

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION OF DEFENDANTS FOR THE COURT TO RESCIND ITS ORDER

Defendants respectfully move the Court to rescind its order filed on January 28, 1971, in this action. The order reads as follows:

> "It appearing that the achievement test scores of the children involved in the voluntary busing program ordered by this court in its judgment of June 19, 1967 may be helpful in determining the issue relating to per-pupil expenditure now before the court,
>
> "It is ORDERED that the defendants file in the record not later than February 15, 1971 such statistics and studies as will show the effect of the voluntary busing program on the achievement test scores of the children participating. These statistics should be on a school-by-school basis so that the improvement, if any, of the children in each receiving school may be discerned."

The order was issued sua sponte, and defendants are concerned that the Court has acted under a misapprehension of fact. The statistics called for by the Court have not heretofore been collected by defendants, and could only be collected at substantial expense.

From time to time, defendants have published test score results by school, by grade. The statistics are furnished defendants by the test publisher. In making its order, however, the Court has called for the achievement test scores of individual

children involved in the busing program and how these scores change over time. The Court realizes that the average test score of the class in which the child is a member is not relevant to the issue of per pupil expenditure and educational opportunity. Apparently, plantiffs do not grasp the significance of this difference. At page 27 of the Michelson document, they state: "There is some evidence that this results at least to some extent from the schools: Children who were bussed to these schools performed better than they had previously performed, relative to their grade." (Emphasis added).

An average of about 1500 pupils has participated in the volunteer busing program each year since the program was ordered by the Court in June, 1967. The program is into its fourth year of operation. Many of the pupils originally involved in the program have graduated from the receiving schools and are attending the junior high schools of the District. Other pupils have participated in the busing program for a single semester or a single year and then have been withdrawn from the program by the parents. Other pupils are new to the program this year. The total number of pupils who have participated in the volunteer busing program at one time or another since the Court's decree is not known. It is believed that because of graduations, withdrawals, and new volunteers, the total number of participating pupils is probably about 3000.

Achievement test scores are kept in the student's individual folder, which is maintained in the school the pupil is attending. When a pupil is graduated from an elementary school, his file is transmitted to the junior high school that he will attend. When a pupil withdraws from the busing program, his file is returned from the receiving school to the sending school. There is a central

repository for individual achievement test scores, but the results are in gross storage and not arranged by pupils. The preliminary feeling of defendants is that a field survey would be more efficient than gathering the data from central storage. Either way, it would be a manual job. Either way, it would be very burdensome.

Since July, 1970, defendants have expended untold manhours in response to the orders of the Court to generate data to file with the Court and to serve upon plaintiffs. From time to time, defendants have requested extentions of time to file data and memoranda, but defendants have never before objected to an order of the Court. In this instance, however, defendants feel compelled to move the Court to rescind its order. Defendants believe that the Court unknowingly has ordered defendants to perform a task that is burdensome and oppressive.

The order of the Court is in the nature of discovery that would ordinarily be launched by plaintiffs. In this regard, the declaration of Judge Holtzoff in Aktiebolaget Vargos v. Clark, 8 F.R.D. 635 (D.C.D.C. 1949) is relevant:

> "Interrogatories are not to be used in an oppressive manner. An adverse party should not be required to perform burdensome labors or to execute difficult and expensive tasks, in searching for facts and classifying and compiling data. A litigant may not compel his adversary to go to work for him."

This is especially true in this case wherein it is obvious that plantiffs have "rested" and are content with the state of the record now before the Court.

The order of the Court is not only burdensome, it will not lead to probative evidence. The Department of Elementary Education has made a preliminary survey to determine the fruitfulness of any effort to collect the statistics called for by the Court. The attention of the Court is directed at this time to the Affidavit of Evelyn Ehrman. The Department of Elementary Education surveyed ten schools receiving bussed pupils. Nine of these schools are located west of Rock Creek Park. There are 457 pupils presently attending these schools under the volunteer busing program. Only 53 of these

pupils have taken two achievement tests that are comparable, the Comprehensive Tests of Basic Skills. These 53 pupils have been in the busing program longer than the current school year. This leads defendants to believe that these pupils were also in the receiving school when they took the Comprehensive Tests of Basic Skills in November, 1969. No comparable test scores are available for these pupils in the sending school. A further breakdown is given by Mrs. Ehrman in her Affidavit.

More than 53 pupils have been tested twice in their elementary school experience, but the others have usually taken the Comprehensive Tests of Basic Skills and the Sequential Tests of Educational Progress. As is stated in the Affidavit of Wilbur A. Millard, these test instruments are produced and sold by different publishers who have not published conversion scales. This is not surprising. For market reasons that are obvious, test publishers would not make available a conversion scale which would permit a comparison of test results in test instruments offered for sale by a competiting publisher.

Should the Court not rescind its order, an entirely new phase of this case will be opened. There must be an end to litigation. Defendants, and it is believed plantiffs too, await the ruling of the Court on the merits on the basis of the record before it. *

Respectfully submitted,

C. FRANCIS MURPHY
Acting Corporation Counsel, D. C.

JOHN A. EARNEST
Assistant Corporation Counsel, D. C.

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Assistant Corporation Counsel, D. C.

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*Defendants have received Plaintiffs' Rebuttal Memorandum but have not yet decided if they will make a reply. Any reply would be confined to the record and argument now before the Court.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS W. HOBSON, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 82-'66
	:	
CARL F. HANSEN, et al.,	:	
	:	
Defendants.	:	

SEPARATE REPLY OF DEFENDANT, BARDYL R. TIRANA,
A MEMBER OF THE BOARD OF EDUCATION, TO
PLAINTIFFS' MEMORANDUM OF DECEMBER 8, 1971

Bardyl R. Tirana, an individual defendant and member of the District of Columbia Board of Education (the "Board"), hereby replies to Plaintiffs' Memorandum (the "Memorandum") of December 8, 1971, and disassociates himself from the position taken herein by the Board and the Corporation Counsel on behalf of the Board. Mr. Tirana has no objection to the entry of the Proposed Order (the "Proposed Order"), Appendix A to the Memorandum, for the following reasons:

1. The Board and the administration of the public schools (the "Administration") have made a good faith effort to comply with the Court's order of June 19, 1967 (the "Order").

2. The Board and Administration, however, could not have complied and did not comply with the Order because:

(a) The historical discrimination on the basis of race and economic status, particularly in the areas east of the Anacostia River, was so great that the Board did not have the capacity to make an immediate and effective correction;

(b) From the time of entry of the Order, and even now, the Board and Administration have had little effective control over their human, physical and financial resources.

For instance, since Mr. Tirana became a member of the Board in January, 1970, he has been requesting and unable to obtain monthly financial statements so that he could know how funds are in fact spent and the financial condition of the public schools. There appears to be little manpower control, so that it is difficult to determine at any given time what public school employees are doing, or if they are working at all.

(c) Development of adequate physical facilities for the public schools particularly east of the Anacostia River has been hampered by a lack of adequate city planning and the inefficiency of the city government. While the Board has some control in the construction process, by itself it could not have materially hastened the relief of overcrowding since entry of the Order, by means of new construction.

3. The Board and Administration have made great strides in accomplishing control over human, physical and financial resources. The recording of information has been automated, and although the furnishing of information to the Administration for planning (or indeed for this Court) has in the past been difficult, in the future it may become routine. (The discipline of having to comply with the discovery process herein has been a substantial incentive to automation.)

4. The Proposed Order is at present unobjectionable:

(a) Paragraph A provides for equalization within a limit of 5%. Adequate provision is made for exclusions for special and compensatory education. Flexibility for the Board is ensured by excluding impact aid funds, Title I ESEA funds and other funds not derived from the regular appropriated operating budget.

(b) Mr. Tirana joins the Administration in the belief

that length of service of teachers (and experience pay) has little bearing on the effectiveness of tachers. However, the Board cannot in one breath in justifying budget requests to the Congress assert that teachers with longevity are better and should be paid more; and then in the other breath disavow this policy before this Court. If the Board objects in principal to the Proposed Order because of the inclusion of "experience pay" in the equalization formula, the solution is simple enough -- the Board can adopt and implement a policy of compensating teachers on the basis of merit instead of longevity.

(c) The Board and Administration have a policy of making information available to the public. In the past, the Board has not had the capacity to produce adequate information, but is rapidly reaching a point of competence in this area. (See Paragraph 3, supra.) Mr. Tirana feels certain that the Administration wants as a matter of sound policy to make available on a voluntary basis substantially the same information sought in Paragraphs B and C of the Proposed Order at least annually, if not more frequently.

5. At some future time, the Board and Administration may adopt specific, measurable and educationally justifiable plans which are not consistent with the Proposed Order. At such a time, upon a prima facie showing that the plans are reasonably designed in substantial part to overcome the effects of past discrimination on the basis of economic and racial status, the Court should be prepared forthwith to modify the Proposed Order, if entered. (See, for instance, the experimental nature of the order in Brown v. Board of Education.)

WHEREFORE, Defendant, Bardyl R. Tirana, prays that the Court note his position herein; and that in the event the Proposed Order is entered, the Court be prepared to modify it upon a prima facie showing of good cause by the Board of Education.

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Washington, D. C. 20016
783-3344; 244-6579

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Separate Reply of Bardyl R. Tirana was mailed postage prepaid on January 18, 1971 to Thomas R. Nedrich, Esq., Assistant Corporation Counsel, Room 308 District Building, Washington, D. C. 20004, as attorney for defendants; to Peter F. Rousselot, Esq., 815 Connecticut Avenue, N. W., Washington, D. C. 20006, as attorney for plaintiffs; to John A. Bleaveans, Washington Lawyers Committee for Civil Rights Under Law, 1025 - 15th Street, N. W., Washington, D. C. 20005, attorney for intervenors Budd; to Don R. Allen, Esq., 1775 K Street, N. W., Washington, D. C. 20006, as attorney for intervenors Bennett; and to Stephen B. Ives, Jr., Esq., 1320 - 19th Street, N. W., Washington, D. C. 20036, attorney for intervenors Stout.

BARDYL R. TIRANA